MISSISSIPPI CODE 1972

Annotated

Agriculture, Horticulture
and Animals

Labor and Industry

Titles 69 to 71

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME FIFTEEN

AGRICULTURE, HORTICULTURE AND ANIMALS

LABOR AND INDUSTRY

§§ 69-1-1 to 71-15-9

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2021 REGULAR
LEGISLATIVE SESSION

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. Summer
Attorney General

PUBLISHER'S FOREWORD

This 2021 Replacement Volume 15 of the Mississippi Code of 1972 Annotated represents material appearing in the original 1973 bound volume, the 2000 Replacement Volume 15, the 2005 Replacement Volume 14, the 2012 Volume 14A, and the 2011 Replacement Volume 15, and reflects amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2021 Regular Legislative Session.

This volume contains the text of Titles 69 and 71, of the Mississippi Code of 1972 Annotated, as amended through the 2021 Regular Legislative Session.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals decisions and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 4th Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

A comprehensive Index appears at the end of this volume.

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PUBLISHER'S FOREWORD

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 9443 Springboro Pike, Miamisburg, OH 45342.

September 2021 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
— Advance Sheets
— Amendment Notes
— Analyses
— Code Status
— Comparable Legislation from other States
— Court Rules
— Cross References
— Editor's Notes
— Effective Dates
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— Organization and Numbering System
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— Research and Practice References
— Statute Headings
— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 9443 Springboro Pike, Miamisburg, OH 45342.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are retained online indefinitely.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States*.

HISTORY NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The history note follows the section text, preceding any other annotations for the section. Information in the history note is listed in chronological order, first by Codes, then by Laws, with the most recent information listed last. If a section has been renumbered, the former number will appear in the history note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

OPINIONS OF THE ATTORNEY GENERAL

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Opinions of the Attorney General."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
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- Allocation of Acts of Legislature, 1931 — 1972.
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- Consolidated Tables of amendments and repeals of 1942 Code sections.
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§ 69-1-1. Department of Agriculture and Commerce created.

(1) A Department of Agriculture and Commerce is created and established under the management and control of a public officer to be known as the Commissioner of Agriculture and Commerce, who shall have competent knowledge of agriculture, mining, manufacturing, statistics and general industries, must be an experienced and practical agriculturist; must be a resident of the state for five (5) years immediately preceding the day of election; and shall be elected by the people at the time and in the manner that other state officers are elected.

(2) The residency requirements specified under this section shall apply to elections held from and after January 1, 2020.

HISTORY: Codes, 1906, § 1622; Hemingway's 1917, § 3403; 1930, § 3599; 1942, § 4415; Laws, 1958, ch. 148, § 1; Laws, 2019, ch. 433, § 4, eff from and after July 1, 2019.

Cross References — Salary of Commissioner of Agriculture and Commerce, see § 25-3-31.

Duty of Department of Agriculture and Commerce when chemical located in underground water exceeds or is likely to exceed state standards and has source not within regulatory jurisdiction of Commission on Environmental Quality, see § 49-17-26.

Deposit, to the credit of the Department of Agriculture and Commerce for the use and benefit of the agriculture and forestry museum, of proceeds from the conveyance of certain lands to the Mississippi Department of Transportation, see § 65-1-163.

Studies of merits or feasibility of commodity exchange entity, Farm Assistance in Rural Mississippi Program, and marketing outlets, see § 69-1-49.

Organization of department, see § 69-1-203.

Assistance by Department of Agriculture and Commerce in making relevant information available to Cooperative Extension Service for information clearinghouse assisting farmers, see § 69-2-5.

Regulation of grain dealers, see §§ 75-45-301 et seq.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 16 et seq.

CJS.
3 C.J.S., Agriculture §§ 1 et seq.

§ 69-1-3. Term of office of commissioner.

The term of office of the Commissioner of Agriculture and Commerce shall be four years, and any vacancy occurring shall be filled by appointment by the Governor as provided by law.

HISTORY: Codes, 1906, § 1623; Hemingway's 1917, § 3404; 1930, § 3600; 1942, § 4416.

Cross References — Provision that a Commissioner of Agricultural and Commerce shall be elected in 1987 and every four years thereafter, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see § 23-15-291 et seq.

JUDICIAL DECISIONS

1. Domestic Violence.

In an action arising out of an automobile accident that occurred at the entrance to a municipal airport, which was physically located in Rankin County, plaintiff's allegations that the other driver violated state motor vehicle statutes (Miss. Code Ann. §§ 63-15-43 and 63-3-801) and that plaintiff's insurer violated Miss. Code Ann. § 83-11-101 by failing to compensate him adequately for medical expenses under his uninsured motorist policy were insufficient to establish jurisdiction in Hinds county under Miss. Code Ann. § 61-9-3(3), even if the airport were to be found to belong to the City of Jackson, which is located in Hinds county; Miss. Code Ann. § 61-9-3(3) does not apply because the statutes alleged to have been violated were not against laws resulting from action by the municipal officials of Jackson, nor laws which are "of and applicable to" the City of Jackson, but rather, were "of" the Mississippi State Legislature and resulted from state action. Holmes v. McMillan, 21 So. 3d 614, 2009 Miss. LEXIS 567 (Miss. 2009).

§ 69-1-5. Oath and bond of commissioner.

The commissioner, before entering upon the duties of the office, must take and subscribe the oath of office prescribed by the constitution, and must enter into bond payable to the State of Mississippi, in the sum of five thousand dollars with a guaranty company, the expense of such bond being paid by the state. The bond must be approved by the Attorney General and when approved shall, together with the oath of office, be filed in the office of the secretary of state.

HISTORY: Codes, 1906, § 1625; Hemingway's 1917, § 3406; 1930, § 3601; 1942, § 4417.

Cross References — Oaths of office and official bonds, generally, see §§ 25-1-9 et seq.

§ 69-1-7. Place of office.

The Commissioner of Agriculture and Commerce must keep his office in the city of Jackson.

HISTORY: Codes, 1906, § 1627; Hemingway's 1917, § 3408; 1930, § 3602; 1942, § 4418.

§ 69-1-9. Appointment of clerk; oath and term of office.

The Commissioner of Agriculture and Commerce must appoint a clerk, who must take the oath of office to discharge faithfully all the duties, which are or may be required of him by law. The clerk shall hold office during the term of the commissioner by whom he is appointed, and until the appointment and qualification of his successor, unless sooner removed.

HISTORY: Codes, 1906, § 1628; Hemingway's 1917, § 3409; 1930, § 3603; 1942, § 4419.

§ 69-1-11. Duties and salary of clerk.

The clerk must discharge such duties as may be prescribed by the Commissioner of Agriculture and Commerce. The expense necessarily incurred by the clerk in traveling on business of the department, under direction of the commissioner, must be paid for and charged against the department.

HISTORY: Codes, 1906, § 1629; Hemingway's 1917, § 3410; 1930, § 3604; 1942, § 4420.

§ 69-1-13. Duties of commissioner.

The following are the duties of the Commissioner of Agriculture and Commerce:

(a) He shall encourage the proper development of agriculture, horticulture and kindred industries.

(b) He shall encourage the organization of neighborhood and county agricultural clubs and associations, and out of these the organization of the state agricultural association.

(c) He shall collect and publish statistics and such other information regarding such industries of this state and of other states as may be of benefit in developing the agricultural resources of the state. To this end he shall put himself in connection and shall cooperate with the agricultural department of other states and with the Commissioner of Agriculture of the United States, and shall provide for the proper and careful distribution of all documents and information coming into his possession on account of the department that may be of interest and benefit to the people of the state.

(d) He shall cause to be investigated the diseases of grain, cotton, fruit and other crops grown in this state and also remedies for such diseases, and also the habits and propagation of the various insects that are injurious to the crops of the state and the proper mode of their destruction.

(e) He shall investigate the subject of grasses and report upon their value and the cultivation of the varieties best adapted to the different sections of the state.

(f) He shall inquire into the subjects connected with dairying that he may deem of interest to the people of the state, and in this connection the raising of stock and poultry, the obtaining of such as are of most value, and the breeding and propagation of the same; and shall encourage raising of fish and the culture of bees.

(g) He shall investigate the subjects of subsoiling, drainage, etc., and the best modes of effecting each, and of irrigation and what portions of the state can be best benefited thereby.

(h) He shall investigate and report upon the culture of wool and the utility and profit of sheep-raising, also the culture of silk and its manufacture and preparation for market.

(i) He shall investigate and report on the question of broadening the market for cotton and cotton goods in the United States and foreign countries.

(j) He shall cause a proper collection of agricultural statistics to be made annually, and to this end shall furnish blank forms to the tax assessors of each county, and it is made the special duty of the tax assessor to whom said blanks are furnished to report to the bureau a list of all public or private ginners in his county, with their post offices, upon the demand of the commissioner. It shall be the duty of the commissioner to furnish to such ginner a form or forms of report to be made to the bureau at such time as the commissioner may direct. A failure to make such reports on the part of the ginner or assessor as required by said commissioner shall be deemed a misdemeanor, and, upon conviction, punished as provided by law. It shall be the duty of the members of the boards of supervisors and the county tax assessor of each county in this state to make such reports as may be required by this bureau touching the matter within the scope of this chapter; and failure of any supervisor or tax assessor to make such report when required shall be deemed a misdemeanor and shall be punished as provided by law.

(k) He shall appoint county correspondents who shall report to him from time to time, as may be desired.

(*l*) He shall collect specimens of wood suitable for manufacture and other purposes, and specimens of agricultural, mineral, phosphate and marl deposits of the state; cause correct analysis of such as may be deemed expedient to be made and recorded in a substantial book to be kept for this purpose.

(m) He shall also, as soon as practicable, prepare a convenient handbook with necessary illustrated maps, which shall contain all necessary information as to the mines, mineral, forest, soil, and other products, climate, water, waterpower for the establishing of factories, land, flowers, fisheries, mountains, streams, and all other statistics as are best adapted to the giving of proper information and the attraction of advantages which the state affords to immigrants, and shall make illustrated expositions thereof whenever practicable at international and state expositions.

(n) He shall have the primary responsibility for developing programs that will enhance the marketing of the state's agricultural products to both national and international markets.

HISTORY: Codes, 1906, § 1630; Hemingway's 1917, § 3411; 1930, § 3605; 1942, § 4421; Laws, 1987, ch. 482, § 29, eff from and after passage (approved April 15, 1987).

Cross References — Assembly of data on natural resources by secretary of state, see § 7-3-49.

County Extension Department for promotion and development of agriculture, see § 19-5-63.

Duty of county assessor to gather and record data, see § 27-1-19.

Agricultural seeds, generally, see §§ 69-3-1 et seq.

Authority of commissioner to enforce regulations of agricultural co-operative associations, see § 69-7-407.

Duty of commissioner to enforce pesticide application law, see § 69-23-103.

State soil and water conservation committee, generally, see § 69-27-9.

Duties of commissioner under public grain warehouse law, see § 75-44-7.

Duties of commissioner with respect to grain dealers law, see § 75-45-313.

Duty of commissioner to enforce statute on commercial fertilizers, see § 75-47-3.

Duty to administer and enforce certain provisions pertaining to gasoline and petroleum products, see § 75-55-3.

Duty to administer and enforce certain provisions pertaining to antifreeze and coolants, see § 75-56-5.

OPINIONS OF THE ATTORNEY GENERAL

Based on lack of legislation to contrary, it may be implied from powers bestowed on commissioner of agriculture and commerce pursuant to Miss. Code Section 69-1-13 that Department of Agriculture and Commerce has authority to enter into exclusive soft drink beverage contract on Jim Buck Ross Mississippi Agriculture and Forestry Museum property. Ross, Jan. 3, 1993, A.G. Op. #92-1016.

The Department of Agriculture and Commerce may permit the use of the Mississippi Agriculture and Forestry Museum to another state agency at no cost, and may waive the lease fee for other governmental entities. The agency may reduce the lease rate to private individuals or organizations to encourage use on certain days of the week, so long as the policy is applied consistently and uniformly and the reduction does not constitute a donation to a private organization. Spell, March 30, 2007, A.G. Op. #07-00156, 2007 Miss. AG LEXIS 69.

RESEARCH REFERENCES

Am. Jur.	**CJS.**
3 Am. Jur. 2d, Agriculture § 17.	3 C.J.S., Agriculture § 7.

§ 69-1-14. Employment of counsel by commissioner; compensation and expenses.

(1) The Commissioner of Agriculture and Commerce is hereby authorized and empowered to employ an attorney to represent the department of agriculture and commerce and to fix his compensation subject to the approval of the state personnel board. Said attorney shall be a full-time employee of the department of agriculture and commerce and shall be furnished such office space and clerical assistance as shall be necessary. In addition to his duties with the department of agriculture and commerce, said attorney shall represent the board of animal health, the Mississippi State Fair Commission and the Mississippi Central Market Board. The salary and expenses of said attorney shall be paid from any funds available to the department of agriculture and commerce, the board of animal health, the Mississippi Fair Commission and the Mississippi Central Market Board in a ratio commensurate with the services provided by said attorney to each of the said agencies.

(2) The Department of Agriculture and Commerce, the board of animal health, the Mississippi Fair Commission and the Mississippi Central Market Board are hereby authorized and empowered to expend such sums from any funds available for the purposes of paying the salary and expenses of the attorney provided for in subsection (1).

HISTORY: Laws, 1983, ch. 365, §§ 1, 2, eff from and after July 1, 1983.

Cross References — Authority of the Mississippi Fair Commission to employ an attorney, see § 69-5-3.

Authority of the Department of Agriculture and Commerce, see § 69-7-109.

Authority of the Board of Animal Health to employ an attorney, see § 69-15-7.

§ 69-1-15. Commissioner to make report.

The Commissioner of Agriculture and Commerce shall make and submit to the Governor on or before the 10th day of January each year a report showing all the expenditures of the bureau for the preceding year and shall make a full and comprehensive report of the scope of the work and expenditures of the bureau to each session of the Legislature within ten days of the convening thereof.

HISTORY: Codes, 1906, § 1631; Hemingway's 1917, § 3412; 1930, § 3606; 1942, § 4422.

§ 69-1-17. State institutions to aid in furnishing data; free transportation.

In order to facilitate the collection and collation of the accurate information of the resources of the state along all lines, the heads of the several departments of the state government and of the state institutions are hereby required to furnish accurately such information as may be at their command to the Commissioner of Agriculture and Commerce when called upon for same; and the commissioner is hereby empowered to enter manufacturing establishments chartered by the state, in prosecution of this work, and the corporations operating the same shall furnish such information as may not be injurious to their business, when requested to furnish same by the commissioner. The commissioner and his clerks shall have the right to accept and use free transportation over steamships, steamboat and railway lines.

HISTORY: Codes, 1906, § 1632; Hemingway's 1917, § 3413; 1930, § 3607; 1942, § 4423.

Cross References — Assembly of data on natural resources by Secretary of State, see § 7-3-49.

§ 69-1-18. Definitions; authority of commissioner to promulgate rules and regulations and to conduct sanitation inspections in retail food stores; licensing; penalties.

(1) The following words and phrases shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Potentially hazardous food" means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting: the growth of infectious or toxigenic microorganisms; the growth and toxin production of Clostridium botulinum; or in raw shell eggs, the growth of salmonella enteritis. "Potentially hazardous food" includes an animal food (of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; and cut melons.

(b) "Micro market" means an unattended, self-checkout retail establishment that utilizes an automated payment system; is located in the interior of a building that is generally not accessible by the general public, with limited access and use to a defined population; and

(i) Offers for sale only commercially, tamper-evident packaged food and beverages properly labeled for individual retail sale and acquired from a source approved by the United States Food and Drug Administration or an appropriate state government agency; whole, uncut, raw fruits and vegetables; such other food and beverages as may be authorized in the Food Code, as adopted by the Department of Agriculture and Commerce; and any other food and beverages not otherwise subject to any required on-site inspection;

(ii) Has no on-site food preparation except for the heating or reheating of food in a microwave oven;

(iii) May utilize beverage dispensers which provide individual servings; and

(iv) May utilize refrigeration and freezer units.

(c) "Vending Machine" means a self-service machine that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses servings of food in bulk or in packages, or prepared by the machine, without the necessity of replenishing the machine between each vending operation.

(d) "Retail food establishment" means any establishment where food and food products are offered for sale to the ultimate consumer and intended for off-premise consumption. Such food or food products may be exposed to varying degrees of preparation and may often need further preparation or processing after it has been purchased. A retail food establishment does not include:

(i) An establishment that offers only prepackaged foods that are not potentially hazardous;

(ii) A produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) A food processing plant;

(iv) A food establishment as defined by the Mississippi State Department of Health;

(v) A micro market; and

(vi) A vending machine.

(2) The commissioner and his agents shall have the authority:

(a) To promulgate rules and regulations establishing certain sanitation requirements for retail food establishments;

(b) To conduct sanitation inspections in retail food establishments; and

(c) To publish the names and addresses of violators and such information pertaining to violation(s) of this section as he deems appropriate.

(3) Each retail food establishment, before engaging in business, shall obtain a license from the commissioner. Owners of more than one (1) retail food establishment must obtain a license for each establishment. A license fee of Ten Dollars ($10.00) must be paid to the department before a license will be issued. Application for such license shall be made on forms prescribed and furnished by the commissioner. Licenses issued under this subsection by the commissioner shall expire on June 30 each year and application for renewals thereof shall be made annually before the expiration date. Licenses shall not be transferable and application must be made for a new license if there is any change in location or ownership of the business.

(4) Any person who violates any provision of this law or the regulations adopted hereunder shall be guilty of a misdemeanor, and, upon conviction, shall be punished by the imposition of a fine not to exceed Five Hundred Dollars ($500.00) or by imprisonment in the county jail for a term not to exceed six (6) months, or both.

(5) The commissioner may impose administrative penalties for violation of this section.

(6) Any person found by the commissioner to be in violation of this section may be assessed a penalty in an amount of not more than Five Hundred Dollars ($500.00) and subsequent violations within a six-month period at a

penalty of not more than One Thousand Dollars ($1,000.00). In addition to, or in lieu of, such penalties the commissioner may suspend or revoke the permit issued to such person under terms of this section.

(7) When any violation of this section or the rules and regulations promulgated hereunder occurs, or is about to occur, that presents a clear and present danger to the public health, safety or welfare requiring immediate action, the commissioner or any of the department's field inspectors, or any other persons authorized by the commissioner, may issue an order to be effective immediately before notice and a hearing, that imposes any or all of the following penalties against the accused: (a) a stop sale order on any product in violation of this section; (b) an order to seize any product that is not in compliance with this section and require it to be denatured or destroyed under the supervision of the department's inspectors; or (c) an order that the retail food establishment or any department within such establishment cease operations until it is in compliance with this section. The order shall be served upon the accused in accordance with Rule 4 of the Mississippi Rules of Civil Procedure or certified mail or it may be served by giving a copy of the order to the manager of the retail food establishment or, where no manager is present, an employee of the establishment. The accused shall then have twenty (20) days after service of the order upon him within which to request an informal administrative review before the Director of the Bureau of Regulatory Services in the department, or the director's designee, who shall act as reviewing officer. If the accused makes such a request within such time, the reviewing officer shall provide an informal administrative review to the accused within ten (10) days after such request is made. If the accused does not request an informal administrative review within twenty (20) days, then he shall have waived his right to such review. At the informal administrative review, there shall be no court reporter or record made of the proceedings. Each party may present its case in the form of documents, oral statements or any other method. The rules of evidence shall not apply. The reviewing officer's decisions shall be in writing, and it shall be delivered by certified mail. If the accused is aggrieved by the order of the hearing officer, he may appeal to the commissioner for a full evidentiary hearing. Such appeal shall be perfected by filing a notice of appeal with the commissioner within thirty (30) days after the order of the reviewing officer is served on the appealing party. The hearing before the commissioner or his designee shall be held within a reasonable time after the appeal has been perfected. Failure to perfect an appeal within the allotted time shall be deemed a waiver of such right.

HISTORY: Laws, 1997, ch. 348, § 1; Laws, 2000, ch. 514, § 1, eff from and after July 1, 2000; Laws, 2019, ch. 338, § 1, eff from and after July 1, 2019.

Cross References — Civil penalty imposed under § 69-1-56 to be based upon administrative hearing per provisions of this section, see § 69-1-56.

OPINIONS OF THE ATTORNEY GENERAL

Subsection (2) provides the Mississippi Department of Agriculture and Commerce with the general authority and duty to regulate retail food sanitation within the state, with a definition of "retail food establishment" broad enough to include establishments that sell seafoods. Spell, Jr., Nov. 2, 2001, A.G. Op. #01-0608.

§ 69-1-19. Commissioner to establish grades and standards of farm products.

The Commissioner of Agriculture and Commerce is hereby authorized to establish grades and standards from time to time for farm products grown or produced in this state, provided that any grade or standard on any farm product which may be established by the United States Department of Agriculture under authority of congress shall also be established by the commissioner of agriculture and commerce as the standard for this state.

The Commissioner of Agriculture and Commerce may also establish standard sizes for boxes, or containers, used in the handling of fruits and vegetables in this state, provided such standards established by the commissioner shall conform with the federal standard container act of congress. The commissioner may also establish the standard weight of each box or container when filled with fruits or vegetables.

HISTORY: Codes, 1930, § 3608; 1942, § 4424; Laws, 1924, ch. 274; Laws, 1948, ch. 191, § 1.

Cross References — Regulation of marketing of vegetables by cooperative associations, see §§ 69-7-405 et seq.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 48 et seq.

CJS.
3 C.J.S., Agriculture § 7.

§ 69-1-21. Certifying grade and condition of farm products.

(1) The Commissioner of Agriculture and Commerce is hereby authorized to investigate and certify to shippers and other financially interested parties, the grade, quality or condition of farm products in accordance with the standard established by him. The certificates issued by the commissioner pursuant to this chapter shall be received in all counties of this state as prima facie evidence of the truth of statements contained therein. For this service the commissioner may charge reasonable fees designed to cover the cost of these services.

(2) All fees collected under the provisions of this section shall be deposited in the general fund of the state treasury.

HISTORY: Codes, 1930, § 3609; 1942, § 4425; Laws, 1924, ch. 274; Laws, 1970, ch. 255, § 2, eff from and after July 1, 1970.

Cross References — Inspection of seed and fertilizer by federal government, see

§ 69-1-29.

Regulation of marketing of vegetables by cooperative associations, see §§ 69-7-405 et seq.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 48 et seq.

CJS.
3 C.J.S., Agriculture § 7.

§ 69-1-23. Inspection of grain crops; definitions; licensing of inspectors; grading samples.

(1) The Mississippi Department of Agriculture and Commerce is hereby designated as the official inspection agency within the State of Mississippi, or for a company domiciled in the State of Mississippi, to certify to producers, shippers, and other financially interested parties the grade, quality, or condition of grain crops. Grain crops for the purpose of this chapter shall be those crops for which standards have been established under the United States Grain Standards Act; namely, wheat, oats, corn, barley, rye, flaxseed, soybeans, grain sorghum, and mixed grains and other crops for which standards may hereafter be established.

(2) The Mississippi Department of Agriculture and Commerce shall have the sole authority to recommend to the U. S. Department of Agriculture the licensing of inspectors for the purpose of carrying out the inspection, grading and certification of grain inspection under the United States Department of Agriculture Grain Standards Act, except that those persons already licensed as of this date under any other authority may continue to operate in their respective designated areas.

(3) The Commissioner of Agriculture and Commerce shall adopt rules and regulations to provide that any grain producer, submitting grain for sale at any elevator in the state, shall be entitled to have that grain graded by an official inspector. The grain producer shall be responsible for and shall pay the cost of grading such sample.

HISTORY: Codes, 1942, § 4425.3; Laws, 1964, ch. 213; Laws, 1989, ch. 348 § 1; Laws, 1997, ch. 398, § 1, eff from and after passage (approved March 18, 1997).

Cross References — Services provided by state chemical laboratory, see §§ 57-21-1 et seq.

Inspection of seed and fertilizer by federal government, see § 69-1-29.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 48 et seq.

CJS.
3 C.J.S., Agriculture § 7.

§ 69-1-25. Commissioner, Governor and Attorney General to enforce regulations as to products coming in.

(1) The State Commissioner of Agriculture and Commerce, the Governor

and the Attorney General of the State of Mississippi, are hereby authorized and empowered, in their discretion, to protect the welfare of the people of the State of Mississippi by guaranteeing that seeds, feeds, fertilizers, bulbs, vegetables, or any and all other product of farm, grove, forest, garden and minerals, including but not limited to coal and lime, coming into the State of Mississippi meet the proper standards, in accordance with the laws of the State of Mississippi and rules and regulations drawn by the State Commissioner of Agriculture and Commerce, with the approval of the Attorney General, governing the labeling as to net weight, source of origin, purity, and grade thereof. In the case of coal or lime, the State Commissioner of Agriculture and Commerce, with the approval of the Attorney General, may promulgate rules and regulations setting up a form or forms to be used in guaranteeing the net weight at the point of delivery, to be weighed on approved scales in the presence of the purchaser.

(2) Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not exceeding Five Hundred Dollars ($500.00) or imprisonment in the county jail not exceeding six months, or both, and each sale of any such goods or products without meeting the requirements of this section shall constitute a separate offense.

HISTORY: Codes, 1942, § 4425.5; Laws, 1956, ch. 132, §§ 1, 2.

Cross References — Definition of term fertilizer, see § 1-3-13.

Promulgation of regulations governing agricultural liming materials, see § 69-39-19.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.	CJS.
3 Am. Jur. 2d, Agriculture § 34.	3 C.J.S., Agriculture § 7.

§ 69-1-27. Commissioner to co-operate with U. S. Department.

The Commissioner of Agriculture and Commerce is hereby authorized to co-operate with the secretary of the United States Department of Agriculture or any of his authorized agents or representatives in carrying out the purpose of this chapter.

HISTORY: Codes, 1930, § 3610; 1942, § 4426; Laws, 1924, ch. 274.

Cross References — Inspection of seed and fertilizer by federal government, see § 69-1-29.

§ 69-1-28. State regulations governing free-range poultry shall be no more stringent than federal regulations on free-range chickens.

Any regulations or best management practices adopted by the Commissioner of Agriculture regulating free-range poultry only shall be no more stringent or extensive in scope, coverage, or effect than federal regulations and best management practices. For purposes of this section, "free-range poultry" means poultry having free access to the outdoors through their normal growing cycle.

HISTORY: Laws, 2003, ch. 462, § 1, eff from and after July 1, 2003.

§ 69-1-29. Inspection of seed and fertilizer furnished by the federal government.

The Commissioner of Agriculture and Commerce of the State of Mississippi, is authorized and empowered to enter into an agreement and execute any contract pursuant thereto, with the secretary of agriculture of the United States for the purpose of, and providing for, inspection, by the Commissioner of Agriculture and Commerce of the State of Mississippi, of superphosphate, liming materials and seed furnished to producers by the department of agriculture of the United States as grants-in-aid to producers under its soil conservation program.

HISTORY: Codes, 1942, § 4427; Laws, 1942, ch. 258.

Cross References — Inspection of grain crops by department of agriculture and commerce, see § 69-1-23.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture § 37.

CJS.
3 C.J.S., Agriculture §§ 1 et seq.

§ 69-1-30. Security guards for Jim Buck Ross Mississippi Agriculture and Forestry Museum.

The Department of Agriculture and Commerce is hereby authorized to employ or to contract with private security agencies to provide security for the Jim Buck Ross Mississippi Agriculture and Forestry Museum. The jurisdiction of the security guards shall be limited to the museum property and shall not supplant the authority or jurisdiction of any state or local law enforcement officer.

HISTORY: Laws, 1984, ch. 461; Laws, 1991, ch. 516, § 2, eff from and after July 1, 1991.

§ 69-1-31. Repealed.

Repealed by Laws of 1989, ch. 544, § 161, eff from and after July 1, 1989.

§ 69-1-31. [Codes, 1906, § 1622; Hemingway's 1917, § 3403; 1930, § 3599; 1942, § 4415; Laws, 1958, ch. 148, § 1]

Editor's Notes — Former § 69-1-31 established a division of lime within the Department of Agriculture and Commerce.

§ 69-1-32. "Jim Buck Ross Mississippi Agriculture and Forestry Museum" designated.

The Mississippi Agriculture and Forestry Museum shall be renamed and known as the Jim Buck Ross Mississippi Agriculture and Forestry Museum. The Department of Agriculture and Commerce shall have an appropriate sign or signs placed at the museum displaying the new name of the museum.

HISTORY: Laws, 1991, ch. 516, § 1, eff from and after July 1, 1991.

§§ 69-1-33 through 69-1-39. Repealed.

Repealed by Laws of 1989, ch. 544, § 161, eff from and after July 1, 1989.

§ 69-1-33. [Codes, 1942, § 4428; Laws, 1942, ch. 255; Laws, 1944, ch. 243, § 1; Laws, 1948, ch. 192, § 1; Laws, 1958, ch. 148, § 2; Laws, 1981, ch. 322, § 1]

§ 69-1-35. [Codes, 1942, § 4430; Laws, 1942, ch. 255; Laws, 1958, ch. 148, § 3; Laws, 1971, ch. 343, § 1; Laws, 1978, ch. 364; Laws, 1980, ch. 319]

§ 69-1-37. [Codes, 1942, § 4431; Laws, 1942, ch. 255, § 4; Laws, 1944, ch. 243, § 2; Laws, 1948, ch. 360, § 1; Laws, 1958, ch. 148, § 4]

§ 69-1-39. [Codes, 1942, § 4433; Laws, 1942, ch. 255; Laws, 1958, ch. 148, § 5]

Editor's Notes — Former § 69-1-33 authorized the commissioner of agriculture and commerce to establish lime crushing plants.

Former § 69-1-35 authorized the department of agriculture and commerce to buy limestone deposits.

Former § 69-1-37 related to stations, buildings and other facilities for crushing limestone.

Former § 69-1-39 provided that crushed limestone was to be sold at cost.

§ 69-1-40. Warehouses for storage of lime.

The Commissioner of Agriculture and Commerce is hereby authorized at his discretion, and when the funds are available to construct or lease, operate and maintain warehouses to be utilized as a storage place for lime to be used for agricultural purposes. Said warehouses shall be located in the area of the state commonly referred to as the "Mississippi Delta." The Commissioner of Agriculture and Commerce is further authorized and directed to operate said lime warehouses in such a way as to provide adequate amounts of lime needed for agricultural purposes.

HISTORY: Laws, 1975, ch. 383, eff from and after passage (approved March 21, 1975).

§§ 69-1-41 and 69-1-43. Repealed.

Repealed by Laws of 1989, ch. 544, § 161, eff from and after July 1, 1989.

§ 69-1-41. [Codes, 1942, § 4434; Laws, 1942, ch. 255, § 7; Laws, 1944, ch. 243, § 3; Laws, 1948, ch. 360, § 2; Laws, 1958, ch. 148, § 6; Laws, 1966, ch. 222, § 1; Laws, 1970, ch. 256, § 1]

§ 69-1-43. [Codes, 1906, § 1630; Hemingway's 1917, § 3411; 1930, § 3605; 1942, §§ 4421, 4435; Laws, 1942, ch. 255; Laws, 1958, ch. 148, § 7]

Editor's Notes — Former § 69-1-41 provided methods for use of funds collected from the sale of limestone.

Former § 69-1-43 authorized the department of agriculture and commerce to issue rules and regulations for operation of sections within Chapter 1 of Title 69.

§ 69-1-45. Construction and purpose of chapter.

The provisions of this chapter shall not be construed in any way to conflict with the work and scope of the Mississippi State University of Agriculture and Applied Science and the Mississippi Experiment Station. It is the purpose of this chapter to secure the co-operation by the Department of Agriculture and Commerce with the said university and experiment station in the dissemination and publicity of such useful information as may come into the possession of said departments.

HISTORY: Codes, 1906, § 1630; Hemingway's 1917, § 3411; 1930, § 3605; 1942, § 4421.

§ 69-1-47. Funding for repairs and renovations at farmers' market.

The Mississippi Department of Agriculture and Commerce is hereby authorized and empowered, subject to the approval of the Department of Finance and Administration to borrow, from time to time, an amount not to exceed One Hundred Fifty Thousand Dollars ($150,000.00) in the aggregate for repairs and renovations at the Farmers' Market in Jackson, Hinds County, Mississippi.

The rental proceeds received by the Central Market Board shall be pledged for the payment of the principal of and interest on such loan, which shall not exceed a term of ten (10) years and shall bear an interest rate not to exceed that provided in Section 75-17-101, Mississippi Code of 1972.

HISTORY: Laws, 1987, ch. 418; Laws, 1992, ch. 452, § 1, eff from and after passage (approved May 5, 1992).

Editor's Notes — Section 69-7-101 abolished the Central Market Board, referenced in this section, and transferred its powers and duties to the Department of Agriculture and Commerce, effective July 1, 2021.

§ 69-1-48. Authorization to accept, budget, receive and expend funds for improvements to department property and for marketing and promotion programs; funding improvements to Mississippi Agriculture and Forestry Museum.

(1) For purposes of this section, the following words shall have the meanings ascribed herein:

(a) "Department" means the Mississippi Department of Agriculture and Commerce.

(b) "Museum" means the Mississippi Agriculture and Forestry Museum.

(2) The department may accept, budget, receive and expend funds from any source for improvements to department property and for marketing and promotion programs.

(3)(a) The department may allow a federal, state, or local governmental entity or a public, private, commercial or charitable entity to use, publish or advertise the entity's name on department property and in its publications. Furthermore, the commissioner may lease to any public, private, commercial or charitable entity for a term not to exceed twenty (20) years naming rights for museum buildings or property, including, but not limited to, new construction, improvements to existing buildings, grounds and/or objects located on museum property in return for consideration benefitting the department. The lessee shall pay the cost of erecting, maintaining and removing signage related to the property.

(b) Any funds received from the advertising or lease of naming rights shall be retained by the department and expended for improvements to its property, and marketing and promotion programs.

(c) The department may accept, budget, receive and expend these funds in accordance with rules and regulations of the Department of Finance and Administration in the manner consistent with the escalation of federal funds.

(4)(a) There is established in the State Treasury a special fund for the department for the monies collected under this section.

(b) Unexpended monies remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited into the fund.

(5)(a) The department shall make reasonable attempts to notify the donor of any donated property or artifacts determined to be obsolete to allow such donor to retake possession of such item. If efforts to notify the donor prove unsuccessful, then the department may dispose of, auction or sell any property or artifact in the possession of the museum if the department determines that it is obsolete, no longer of value or use to the museum or unclaimed by the donor.

(b) All funds received under this section on behalf of the museum, shall be transferred into the nonbudgeted enterprise fund related to the museum.

The enterprise funds shall be maintained in accordance with generally accepted accounting principles and regulations prescribed by the Department of Finance and Administration.

(c) The department may expend these funds for improvements to the museum and for marketing and promotion programs for the museum in a manner consistent with the museum's historical purpose.

HISTORY: Laws, 2011, ch. 505, § 1; Laws, 2017, ch. 364, § 1, eff from and after passage (approved Mar. 20, 2017).

§ 69-1-49. Studies concerning commodity exchange entity, Farm Assistance in Rural Mississippi (FARM) Program, and marketing outlets; federal assistance; reports.

(1) The Department of Agriculture and Commerce and the Mississippi Cooperative Extension Service shall study the merits of establishing a commodity exchange entity whose purpose shall be to coordinate and enhance the marketing of Mississippi crops, poultry and livestock in national and international markets. Such entity would have the authority to consign and broker such crops, poultry and livestock. A report of the study shall be submitted on or before August 1, 1987, to the Governor, Lieutenant Governor and the Legislature.

(2) The Department of Agriculture and Commerce and the Mississippi Cooperative Extension Service shall evaluate the merits of creating a Farm Assistance in Rural Mississippi (FARM) Program, which shall have as its primary features a price enhancement program and a debt reduction assistance program for crop producers. A report on this program shall be submitted on or before September 1, 1987, to the Governor, Lieutenant Governor and the Legislature.

(3) The Department of Agriculture and Commerce shall request the Agri-Marketing Service, marketing affiliate branch of the United States Department of Agriculture to conduct a feasibility study on marketing outlets. The Department of Agriculture and Commerce shall provide the assistance necessary to accomplish the purpose of this section. A report on this study shall be submitted on or before January 1, 1988, to the Governor, Lieutenant Governor and the Legislature.

HISTORY: Laws, 1987, ch. 482, § 30, eff from and after passage (approved April 15, 1987).

Federal Aspects— Distribution and marketing of agricultural products, see 7 USCS §§ 1621 et seq.

RESEARCH REFERENCES

Am. Jur.	**CJS.**
52 Am. Jur. 2d, Markets and Marketing §§ 19, 21, 34 et seq.	3 C.J.S., Agriculture §§ 24, 25.

§ 69-1-51. Repealed.

Repealed by its own terms by Laws, 1995, ch. 493, § 1, eff on July 1, 1997. § 69-1-51. [Laws, 1995, ch. 493, § 1]

Editor's Notes — Former § 69-1-51 related to the licensing of out-of-state first purchasers of agricultural products.

§ 69-1-53. Studies concerning the market feasibility of the sale of hybrid bream and hybrid black stripe crappie.

The Division of Agriculture, Forestry and Veterinary Medicine at Mississippi State University shall in cooperation with the Mississippi Department of Agriculture and Commerce and the Mississippi Department of Wildlife, Fisheries and Parks: (a) study the development of a test that can be used in the field for identifying differences between wild species of game fish and game fish produced in an aquacultural facility; and (b) research the culture feasibility and market potential of the sale of hybrid bream and hybrid black stripe crappie as authorized in Section 79-22-9.

HISTORY: Laws, 1997, ch. 370, § 3, eff from and after passage (approved March 18, 1997).

§ 69-1-55. Prohibition against misrepresentation of country of origin of shrimp and crawfish by restaurant that sells imported crawfish or shrimp; penalties for violation.

(1) No owner or manager of a restaurant that sells imported crawfish or shrimp shall misrepresent to the public, either verbally, on a menu, or on a sign displayed on the premises, that the imported crawfish or shrimp is domestic.

(2) A restaurant may designate a shrimp or crawfish as having a United States country of origin if:

(a) The farm-raised shrimp or crawfish is hatched, raised, harvested and processed in the United States; or

(b) The wild shrimp or crawfish is harvested in the waters of the United States, a state or a territory of the United States and processed in the United States, a state or a territory of the United States.

(3)(a) The Commissioner of Agriculture and Commerce and the Attorney General shall regulate restaurants under this section.

(b) The commissioner shall notify, in writing, any restaurant violating this section and shall give the owner or manager three (3) days to correct the violation. No penalties under this section shall apply to any owner or manager that corrects the violation within three (3) days from the date notified by the commissioner.

(4) In addition to any other civil or criminal penalties, any person who violates this section or who otherwise misrepresents imported crawfish or shrimp as domestic may be punished by a fine of not more than One Thousand Dollars ($1,000.00). For a second offense, a person may be punished by a fine of not more than Two Thousand Dollars ($2,000.00). For any subsequent violations, a person may be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by having the license for the restaurant suspended indefinitely or until the restaurant has corrected the violation, or both. Any person against whom a complaint is made or who has been made subject to a fine or license suspension as provided by this subsection may avail themselves of a due process administrative hearing as provided by Section 69-7-616.

HISTORY: Laws, 2011, ch. 476, § 1, eff from and after July 1, 2011.

§ 69-1-56. Produce Safety Rule Program; cooperation with the FDA in developing and administering program; conditional repeal of section; penalty for violation of section.

(1) The Department of Agriculture and Commerce is hereby designated as the state agency responsible for cooperating with the United States Food and Drug Administration (FDA) to enforce the provisions of 21 CFR Part 112. The department is further authorized to cooperate with the FDA in developing and administering the Produce Safety Rule Program of this state. The program requirements will be at least equal to those imposed under 21 CFR Part 112, and the program will be administered in a manner that will prevent or remediate the adulteration of raw agricultural commodities on farms. The department is authorized to enter into such other cooperative agreements as may be necessary to carry out the provisions of the Produce Safety Rule Program.

(2) The Department of Agriculture and Commerce may accept advisory assistance from the Food and Drug Administration in developing the program authorized by this section, technical and laboratory assistance and training, including necessary curriculum, instructional materials, and equipment, and financial assistance or other aid for administration of the program authorized by this section.

(3) The Department of Agriculture and Commerce shall represent the state in all communications and negotiations with the FDA regarding the implementation of this section and the provisions of the FDA Food Safety Modernization Act that fall within the department's authority granted by this section.

(4)(a) The commissioner is authorized to adopt rules and regulations as may be necessary to carry out the provisions of this section, including the following:

(i) Enter the premises of any covered farm for the purpose of inspecting the farm to determine if any provision of this section is being violated;

(ii) Enter the premises of any covered farm for the purpose of securing samples or specimens to determine if any provision of this section is being violated; and

(iii) Seize, condemn, or destroy any produce that is being grown, kept, exposed for sale, held in possession or under the control of any person on a covered farm if that produce is in violation of this section.

(b) No person shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent the commissioner, an inspector of the department or any other person in the performance of his duties pursuant to this section.

(5) The provisions of this section shall remain in effect only as long as the federal funds required to implement the provisions of the FDA Food Safety Modernization Act referenced in this section are provided or upon the date of repeal of 21 CFR Part 112.

(6) Any person who violates a provision of this section or a regulation adopted pursuant to the provisions of this section may be subject to a civil penalty of not more than Five Thousand Dollars ($5,000.00) per violation. Any civil penalty imposed by ruling of the commissioner under this section shall be based upon an administrative hearing held in accordance with the provisions of Section 69-1-18.

HISTORY: Laws, 2018, ch. 301, § 1, eff from and after passage (approved March 5, 2018).

Federal Aspects — FDA Food Safety Modernization Act, see 21 USCS § 2201 et seq.

COUNCIL OF STATE AGENCIES ON AGRICULTURE

Sec.
69-1-61. Repealed.

§ 69-1-61. Repealed.

Repealed by Laws of 2017, ch. 402, § 14, effective July 1, 2017.

§ 69-1-61. [Codes, 1942, § 8946-171; Laws, 1971, ch. 463, § 1; Laws, 1988, ch. 518, § 89, eff from and after July 1, 1988.]

Editor's Notes — Former § 69-1-61 established the Council of State Agencies on Agriculture.

AUTHORITY FOR THE CONTROL OF FIRE ANTS [REPEALED]

Sec.
69-1-81 through 69-1-95. Repealed.
69-1-96 through 69-1-98. Repealed.

§§ 69-1-81 through 69-1-95. Repealed.

Repealed by Laws of 1982, ch. 388, § 9, eff from and after July 1, 1986.

§§ 69-1-81 through 69-1-95. [En Laws, 1976, ch. 427, §§ 1-8; Am Law, 1978, ch. 477, §§ 1-8; Laws, 1980, ch. 332, §§ 1-8; Re & Am Laws, 1982, ch. 388, §§ 1-8; Laws, 1984, ch. 488, §§ 269-271]

Editor's Notes — The provisions of former §§ 69-1-81 through 69-1-95 related to the Mississippi Authority for the Control of Fire Ants.

§§ 69-1-96 through 69-1-98. Repealed.

Repealed by Laws of 1993, ch. 316, § 4, eff from and after passage (approved March 15, 1993).

§ 69-1-96. [En Laws, 1991, ch. 533, § 1]
§ 69-1-97. [En Laws, 1991, ch. 533, § 2]
§ 69-1-98. [En Laws, 1991, ch. 533, § 3]

Editor's Notes — Former §§ 69-1-96, 69-1-97, and 69-1-98 pertained to authorization, execution, fair market value, and hold harmless provisions, in connection with agreements to lease property of the former Mississippi Authority for the Control of Fire Ants.

MISSISSIPPI MARKETING OF AGRICULTURAL PRODUCTS AND INDUSTRY PROGRAM ACT OF 1988

Sec.
69-1-101. Short title.
69-1-103. Creation of "Marketing of Agricultural Products and Industry Program" and "Marketing of Agricultural Products and Industry Council"; purpose.
69-1-105. Membership of council; cooperative agreement between agencies represented on council; authority to enter into agreements and contracts; annual report; agricultural marketing director; expenses of council.
69-1-107. Duties and responsibilities of the council.
69-1-109. Rules and regulations.
69-1-111. Authorization to accept contributions, gifts and grants; agricultural marketing fund.
69-1-113. Repealed.
69-1-115. Authorization for payment of per diem compensation and actual expenses to council members; exceptions.
69-1-117. Liberal construction; savings clause.
69-1-119. Provision of technical guidance and outreach to landowners, farmers, producers regarding management of nuisance wildlife on private agricultural and forestry lands.

§ 69-1-101. Short title.

Sections 69-1-101 through 69-1-117 shall be known and cited as the "Mississippi Marketing of Agricultural Products and Industry Program Act of 1988."

HISTORY: Laws, 1988, ch. 591, § 1, eff from and after passage (approved May 24, 1988).

§ 69-1-103. Creation of "Marketing of Agricultural Products and Industry Program" and "Marketing of Agricultural Products and Industry Council"; purpose.

There is hereby created within the Department of Agriculture and Commerce the Mississippi Marketing of Agricultural Products and Industry Program, to be administered by the Mississippi Marketing of Agricultural Products and Industry Council, hereinafter referred to as "the council," for the purposes of stimulating the development of new markets for Mississippi Agricultural Products and Industry, and further encouraging the establishment, particularly in the rural areas and smaller communities of Mississippi, of industrial operations processing agricultural products to an end-usage stage, ready for sale to the markets of the nation and the world.

HISTORY: Laws, 1988, ch. 591, § 2, eff from and after passage (approved May 24, 1988).

§ 69-1-105. Membership of council; cooperative agreement between agencies represented on council; authority to enter into agreements and contracts; annual report; agricultural marketing director; expenses of council.

(1) The council shall be composed of the Chairman and Vice-chairman, House of Representatives and Senate Agriculture Committees, or their designees, the Commissioner of the Department of Agriculture and Commerce, the Director of the Department of Economic Development, and the Vice-President, Division of Agriculture, Forestry and Veterinary Medicine of Mississippi State University, Alcorn State University, Divisional Director of Agriculture and Applied Sciences, who shall enter into a cooperative agreement to identify resource availability and personnel expertise in all areas directly or indirectly related to agricultural production, management and marketing as may be deemed necessary to achieve the purposes of Sections 69-1-101 through 69-1-117. The cooperative agreement between the agencies shall include, but not be limited to, provisions that Mississippi State University through the Cooperative Extension Service, the Agricultural and Forestry Experiment Station, the College of Veterinary Medicine and the Forest Products Labs shall provide technical, educational and direct marketing assistance; basic and applied research, technology transfer, dissemination of research information, interdisciplinary teams, feasibility studies and networking; the Department of Agriculture and Commerce shall be primarily responsible for market development, product promotion, regulatory functions in developing market standards, monitoring standards and establishment of quality control; public relations for Mississippi agriculture, institutional marketing and data collection; the Department of Economic Development shall be primarily responsible

for agriculture business and economic development, and financial assistance value added processing. All council member agencies are hereby authorized and directed to utilize and share any and all available resources necessary to accomplish the purposes of Sections 69-1-101 through 69-1-117.

In addition, the council shall be authorized to contract or enter into agreements with other agencies and/or private research centers that it may deem necessary to carry out its duties and functions.

The council shall prepare and submit a comprehensive annual report to the Legislature no later than January 15 of each year.

(2) The council shall appoint an Agricultural Marketing Director, herein called director, who shall be competent and qualified in the area of marketing, agriculture or a related area and receive as compensation for services an annual salary to be established by the personnel board. The director shall be the one-point information contact on agricultural production, management and marketing issues and shall be charged with the duty of knowing the role and responsible personnel in each agency on matters related to agriculture. The director shall be directly responsible to the council for tasks assigned in the administration and implementation of programs developed by the council. The director shall be located in the Department of Agriculture and Commerce and administrative support for the director shall be the shared responsibility of the members of the council.

Any expenses incurred by the council agencies in providing support for the Mississippi Marketing of Agricultural Products and Industry program shall be included pro rata in the annual budget of the respective agency.

HISTORY: Laws, 1988, ch. 591, § 3, eff from and after passage (approved May 24, 1988).

Editor's Notes — Section 57-1-54 provides that wherever the term "Mississippi Department of Economic Development" or "Department of Economic and Community Development" appears in any law, they shall mean the Mississippi Development Authority.

Cross References — Additional powers and duties of the council, see § 69-1-107.

Authority of the council to promulgate rules and regulations to carry out the provisions of the Marketing of Agricultural Products and Industry Program act, see § 69-1-109.

§ 69-1-107. Duties and responsibilities of the council.

The duties and responsibilities of the council shall be the following:

(1) To conduct national and international market research to identify trade and investment opportunities.

(2) To provide one-on-one business assistance with research, strategic planning, partner search, evaluation, negotiation and follow-up.

(3) To identify joint ventures and licensing services.

(4) To provide special assistance to Mississippi's agricultural producers and firms engaged in the marketing of agricultural products produced in Mississippi to develop markets.

(5) To conduct market studies to identify agricultural products that can be manufactured in Mississippi from materials and resources available in or to Mississippi for which a profitable and growing market exists.

(6) To assist with layout, design, plans and specifications of plants, machinery, equipment and other facilities necessary to products in profitable volume.

(7) To advertise and solicit for production and industrial promotion purposes.

(8) To provide assistance with financial packaging by utilizing all available fund resources provided by the State of Mississippi including, but not limited to, the Small Business Investment Act, Emerging Crop Fund and the Business Financial Investment Act.

(9) To establish a Mississippi Register of Mississippi Agricultural Producers and set criteria for listing therein.

(10) To coordinate purchasing agreements between state institutions and Mississippi agricultural producers.

(11) To create, establish and organize the state into marketing districts for the most effective and efficient use of marketing resources.

(12) To provide any other assistance and services necessary to accomplish the purposes of Sections 69-1-101 through 69-1-117.

HISTORY: Laws, 1988, ch. 591, § 4, eff from and after passage (approved May 24, 1988).

Cross References — Additional powers and duties of the council, see § 69-1-105.

Authority of the council to promulgate rules and regulations to carry out the provisions of the marketing of agricultural products and industry program act, see § 69-1-109.

§ 69-1-109. Rules and regulations.

The council is hereby authorized and empowered to promulgate rules and regulations required to carry out the provisions of Sections 69-1-101 through 69-1-117.

HISTORY: Laws, 1988, ch. 591, § 5, eff from and after passage (approved May 24, 1988).

§ 69-1-111. Authorization to accept contributions, gifts and grants; agricultural marketing fund.

The Mississippi Marketing of Agricultural Products and Industry Council is hereby authorized and empowered to accept monetary or in-kind contributions, gifts and grants for use in the marketing program. Any such monies shall be deposited in a special fund hereby established in the State Treasury to be known as the "Agricultural Marketing Fund," to be appropriated by the Legislature for use by the Mississippi Marketing of Agricultural Products and Industry Council.

HISTORY: Laws, 1988, ch. 591, § 6, eff from and after passage (approved May 24, 1988).

§ 69-1-113. Repealed.

Repealed by Laws of 2017, ch. 402, § 15, effective July 1, 2017.

§ 69-1-113. [Laws, 1988, ch. 591, § 7, eff from and after passage (approved May 24, 1988).]

Editor's Notes — Former § 69-1-113 established the Agricultural Marketing Advisory Task Force.

§ 69-1-115. Authorization for payment of per diem compensation and actual expenses to council members; exceptions.

Members of the council shall serve without compensation, provided that they shall be entitled to per diem compensation as is authorized by law for each day occupied with the discharge of official duties as members of the council and all actual, necessary expenses incurred in the discharge of their official duties, including mileage as authorized by law. However, no member shall be authorized to receive reimbursement for expenses, including mileage, or per diem compensation unless such authorization appears in the minutes of the council and is signed by the chairman or vice chairman. The members of the council shall not receive per diem or expenses while the Legislature is in session. All expenses incurred by and on behalf of the council shall be paid from a sum to be provided in equal portion from the contingency funds of the Senate and House of Representatives.

HISTORY: Laws, 1988, ch. 591, § 8; Laws, 2017, ch. 404, § 11, eff from and after July 1, 2017.

§ 69-1-117. Liberal construction; savings clause.

The provisions of Sections 69-1-101 through 69-1-117 shall be liberally construed to accomplish the purposes of Sections 69-1-101 through 69-1-117. The powers granted and the duties imposed in Sections 69-1-101 through 69-1-117 shall be construed to be independent and severable. If any one or more sections, subsections, sentences or parts of any of Sections 69-1-101 through 69-1-117 shall be adjudged unconstitutional or invalid, such adjudication shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions so held unconstitutional or invalid.

HISTORY: Laws, 1988, ch. 591, § 9, eff from and after passage (approved May 24, 1988).

§ 69-1-119. Provision of technical guidance and outreach to landowners, farmers, producers regarding management of nuisance wildlife on private agricultural and forestry lands.

The Commissioner of Agriculture and Commerce may provide technical guidance and outreach to landowners, farmers and producers regarding the management of nuisance wildlife on private agricultural and forestry lands. The commissioner is authorized to partner with state and federal agencies regarding nuisance wildlife management and to promote awareness across the state. The department is authorized to accept and expend any special funds received through grants or any other source as appropriated by the Legislature.

HISTORY: Laws, 2020, ch. 417, § 1, eff from and after July 1, 2020.

MISSISSIPPI DEPARTMENT OF AGRICULTURE AND COMMERCE REORGANIZATION ACT OF 1991

Sec.	
69-1-201.	Short title.
69-1-203.	Functions of department; organization of department into offices; duties of offices.

§ 69-1-201. Short title.

Chapter 530, Laws of 1991, shall be known and may be cited as the "Mississippi Department of Agriculture and Commerce Reorganization Act of 1991."

HISTORY: Laws, 1991, ch. 530, § 1, eff from and after July 1, 1991.

Editor's Notes — Laws of 1991 of ch. 530, enacted sections 69-1-201 and 69-1-203. For a complete list of sections affected by Laws of 1991, ch. 530, see Table B, Allocation of Acts, 1991, in the Statutory Tables volume.

§ 69-1-203. Functions of department; organization of department into offices; duties of offices.

The Department of Agriculture and Commerce shall promote the development of agriculture and aquaculture for both native and nonnative species. The department shall be organized into the Administration Office, the Regulatory Office, and the Marketing, Agricultural Development and Finance Office. Each office shall have the duties hereinafter specified in addition to any other duties assigned to it by the commissioner.

The Administration Office shall consist of such employees as may be assigned to it by the commissioner and shall have exclusive responsibility for the following functions of the department:

(a) Accounting;

(b) Payroll;
(c) Purchasing;
(d) Data processing;
(e) Personnel;
(f) Motor pool and vehicles;
(g) Maintenance; and
(h) Printing and records.

The Regulatory Office shall administer those laws relating to the regulation of the labels of syrup containers; the regulation of the sale of planting seed; the regulation of the sale of livestock by weight; the protection of the health of swine; the inspection of grain crops; the testing of the accuracy of petroleum pumps; the inspection of milk manufacturing plants and producers; the establishment of standards for frozen desserts sold in Mississippi; the licensing of exotic bird dealers; the regulation of the disposition of animal and poultry inedible waste; the regulation of the labeling of catfish; the adoption of systems of weights and measures for all commercial purposes in Mississippi; the inspection of meat and poultry and the licensing of facilities used for the processing thereof; and the regulation of the measurement and receiving of pulpwood.

The Marketing, Agricultural Development and Finance Office shall develop direct contact with potential buyers worldwide for the Mississippi agricultural community to expand domestic and international markets; develop and regulate aquaculture production as provided in the Mississippi Aquaculture Act of 1988; and operate and administer the Mississippi Market Bulletin, the Market News Service, the Mississippi Agriculture and Forestry Museum and the Centennial Farm Family Program. This office shall also be responsible for the collection, analysis and dissemination of statistical data concerning the production, supply, price and other aspects of the state's agricultural economy.

HISTORY: Laws, 1991, ch. 530, § 2; Laws, 1992, ch. 363 § 1, eff from and after passage (approved April 21, 1992).

Cross References — Mississippi Aquaculture Act of 1988, see §§ 79-22-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Jim Buck Ross Mississippi Agriculture and Forestry Museum is operated and administered by Mississippi Department of Agriculture and Commerce through general and broad grant of authority pursuant to Miss. Code Section 69-1-203. Ross, Jan. 3, 1993, A.G. Op. #92-1016.

The Mississippi Department of Agriculture and Commerce may rent space to the Craftsmen's Guild of Mississippi, Inc., at the Jim Buck Ross Mississippi Agriculture and Forestry Museum upon such terms and for such consideration, monetary or otherwise, as the Department may find as a matter of fact is sufficient. Spell, April 24, 1998, A.G. Op. #98-0225.

The Department of Agriculture and Commerce may permit the use of the Mississippi Agriculture and Forestry Museum to another state agency at no cost, and may waive the lease fee for other governmental entities. The agency may reduce the lease rate to private individuals or organizations to encourage use on certain days of the week, so long as the policy is applied consistently and uniformly and the reduction does not constitute a donation to a private organization. Spell, March 30, 2007, A.G. Op. #07-00156, 2007 Miss. AG LEXIS 69.

DISPARAGEMENT OF PERISHABLE AGRICULTURAL OR AQUACULTURAL FOOD PRODUCT

Sec.
69-1-251. Legislative findings.
69-1-253. Definitions.
69-1-255. Cause of action for damages and appropriate relief.
69-1-257. Limitations of action.

§ 69-1-251. Legislative findings.

The Legislature finds that the production of agricultural and aquacultural food products constitutes an important and significant portion of the state economy and that it is beneficial to the citizens of this state to protect the vitality of the agricultural and aquacultural economy by providing a cause of action for producers of perishable agricultural food products to recover damages for the disparagement of any perishable agricultural or aquacultural food product.

HISTORY: Laws, 1994, ch. 605, § 6, eff from and after July 1, 1994.

§ 69-1-253. Definitions.

As used in Sections 69-1-251 through 69-1-257, the following terms shall have the following meanings:

(a) “Disparagement” means dissemination to the public in any manner of any false information that the disseminator knows to be false, and which states or implies that a perishable agricultural or aquacultural food product is not safe for consumption by the consuming public. Such information is presumed to be false when not based upon reasonable and reliable scientific inquiry, facts or data.

(b) “Perishable agricultural or aquacultural food product” means any food product of agriculture or aquaculture which is sold or distributed in a form that will perish or decay beyond marketability within a period of time.

HISTORY: Laws, 1994, ch. 605, § 7, eff from and after July 1, 1994.

§ 69-1-255. Cause of action for damages and appropriate relief.

Any producer of perishable agricultural or aquacultural food products who suffers damage as a result of another person’s disparagement of any such perishable agricultural or aquacultural food product has a cause of action for damages and for any other appropriate relief in a court of competent jurisdiction.

HISTORY: Laws, 1994, ch. 605, § 8, eff from and after July 1, 1994.

§ 69-1-257. Limitations of action.

Any civil action for damages for disparagement of perishable agricultural or aquacultural food products shall be commenced within one (1) year after the cause of action accrues.

HISTORY: Laws, 1994, ch. 605, § 9, eff from and after July 1, 1994.

MISSISSIPPI COUNTRY OF ORIGIN LABELING LAW OF 2009

Sec.
69-1-301. Short title.
69-1-303. Definitions.
69-1-305. Requirements imposed upon retailers and suppliers of covered commodities; means of providing information.
69-1-307. Designation of country of origin of beef, lamb, pork, chicken or goat meat; contents of notice for ground beef, pork, lamb, chicken or goat.
69-1-309. Designation of country of origin of farm-raised fish or wild fish; notice to distinguish between wild fish and farm-raised fish.
69-1-311. Designation of country of origin of perishable agricultural products, ginseng, peanuts, pecans or macadamia nuts.
69-1-313. Promulgation of rules and regulations; authority to enter certain premises to conduct label reviews.
69-1-315. Authority to enter into cooperative agreements with federal government.
69-1-317. Authority to conduct audit of retailer that prepares, stores, handles or supplies covered commodities; retailer required to provide information to verify country of origin; injunctive relief for failure to provide information.
69-1-319. Written notification to retailer or supplier of violations; opportunity to correct violations; penalties; appeals.

§ 69-1-301. Short title.

Sections 69-1-301 through 69-1-319 shall be known as the "Mississippi Country of Origin Labeling Law of 2009."

HISTORY: Laws, 2009, ch. 321, § 1, eff from and after Mar. 16, 2009.

Editor's Notes — Laws of 2009, ch. 321, § 12, provides:

"Sections 69-1-301 through 69-1-319 shall take effect and be in force from and after the effective date of the federal rules or regulations on mandatory country of origin labeling promulgated by the U.S. Department of Agriculture."

On January 15, 2009, the U.S. Department of Agriculture, Agriculture Marketing Service, published a final rule for all covered commodities (74 FR 2658). The rule became effective on March 16, 2009.

§ 69-1-303. Definitions.

For purposes of Sections 69-1-301 through 69-1-319, the following terms shall have the meaning ascribed herein unless the context otherwise requires:

(a) "Beef" means the meat produced from cattle, including veal.

(b) "Commissioner" means the Commissioner of Agriculture and Commerce.

(c) "Covered commodity" means any of the following:

(i) Muscle cuts of beef, lamb and pork;

(ii) Ground beef, ground lamb and ground pork;

(iii) Farm-raised fish;

(iv) Wild fish;

(v) Perishable agricultural products;

(vi) Peanuts;

(vii) Meat produced from goats;

(viii) Chicken, in whole and in part;

(ix) Ginseng;

(x) Pecans; and

(xi) Macadamia nuts.

The term covered commodity does not include an item described in this paragraph if the item is an ingredient in a processed food item.

(d) "Farm-raised fish" means farm-raised fish and shellfish and includes a fillet, steak, nugget and any other flesh from a farm-raised fish or shellfish. The term farm-raised fish shall not include catfish as defined in Section 69-7-605.

(e) "Lamb" means meat, other than mutton, produced from sheep.

(f) "Perishable agricultural product" means any of the following: fresh fruits and fresh vegetables of every kind and character, whether or not frozen or packed in ice.

(g) "Pork" means meat produced from hogs or swine.

(h) "Retailer" means any establishment licensed by the commissioner under Section 69-1-18.

(i) "Supplier" means a person engaged in the business of supplying a covered commodity to a retailer.

(j) "Wild fish" means naturally born or hatchery-raised fish and shellfish harvested in the wild and includes a fillet, steak, nugget and any other flesh from wild fish or shellfish. The term wild fish does not include net-pen aquacultural or other farm-raised fish or catfish as defined in Section 69-7-605.

HISTORY: Laws, 2009, ch. 321, § 2, eff from and after Mar. 16, 2009.

Editor's Notes — Laws of 2009, ch. 321, § 12, provides:

"Sections 69-1-301 through 69-1-319 shall take effect and be in force from and after the effective date of the federal rules or regulations on mandatory country of origin labeling promulgated by the U.S. Department of Agriculture."

On January 15, 2009, the U.S. Department of Agriculture, Agriculture Marketing Service, published a final rule for all covered commodities (74 FR 2658). The rule became effective on March 16, 2009.

§ 69-1-305. Requirements imposed upon retailers and suppliers of covered commodities; means of providing information.

(1) A retailer of a covered commodity shall inform consumers, at the final point of sale of the covered commodity to consumers, of the country of origin of the covered commodity.

(2)(a) The information may be provided to consumers by means of a label, stamp, mark, placard or other clear and visible sign on the covered commodity or on the package, display, holding unit or bin containing the commodity at the final point of sale to consumers.

(b) If the covered commodity is already individually labeled for retail sale regarding country of origin, the retailer shall not be required to provide any additional information to comply with this section.

(3) A supplier shall provide information to the retailer indicating the country of origin of the covered commodity.

HISTORY: Laws, 2009, ch. 321, § 3, eff from and after Mar. 16, 2009.

Editor's Notes — Laws of 2009, ch. 321, § 12, provides:

"This act shall take effect and be in force from and after the effective date of the federal rules or regulations on mandatory country of origin labeling promulgated by the U.S. Department of Agriculture."

On January 15, 2009, the U.S. Department of Agriculture, Agriculture Marketing Service, published a final rule for all covered commodities (74 FR 2658). The rule became effective on March 16, 2009.

§ 69-1-307. Designation of country of origin of beef, lamb, pork, chicken or goat meat; contents of notice for ground beef, pork, lamb, chicken or goat.

(1) United States country of origin. A retailer of a covered commodity that is beef, lamb, pork, chicken or goat meat may designate the covered commodity as exclusively having a United States country of origin only if the covered commodity is derived from an animal that was:

(a) Exclusively born, raised and slaughtered in the United States; or

(b) Born and raised in Alaska or Hawaii and transported for a period of not more than sixty (60) days through Canada to the United States and slaughtered in the United States.

(2) A retailer of a covered commodity that is beef, lamb, pork, chicken or goat meat may designate the country of origin of the covered commodity as all of the countries in which the animal may have been born, raised or slaughtered, if the commodity is derived from an animal that was:

(a) Not exclusively born, raised and slaughtered in the United States; or

(b) Born, raised or slaughtered in the United States; and

(c) Not imported into the United States for immediate slaughter.

(3) A retailer of a covered commodity that is beef, lamb, pork, chicken or

goat meat that is derived from an animal imported into the United States for immediate slaughter shall designate the origin as:

(a) The country from which the animal was imported; and

(b) The United States.

(4) A retailer of a covered commodity that is beef, lamb, pork, chicken or goat meat derived from an animal not born, raised or slaughtered in the United States shall designate a country other than the United States as the country of origin.

(5) The notice of country of origin for ground beef, ground pork, ground lamb, ground chicken or ground goat shall include:

(a) A list of all countries of origin of the ground beef, ground pork, ground lamb, ground chicken or ground goat; or

(b) A list of all possible countries of origin of the ground beef, ground pork, ground lamb, ground chicken or ground goat.

HISTORY: Laws, 2009, ch. 321, § 4, eff from and after Mar. 16, 2009.

Editor's Notes — Laws of 2009, ch. 321, § 12, provides:

"This act shall take effect and be in force from and after the effective date of the federal rules or regulations on mandatory country of origin labeling promulgated by the U.S. Department of Agriculture."

On January 15, 2009, the U.S. Department of Agriculture, Agriculture Marketing Service, published a final rule for all covered commodities (74 FR 2658). The rule became effective on March 16, 2009.

§ 69-1-309. Designation of country of origin of farm-raised fish or wild fish; notice to distinguish between wild fish and farm-raised fish.

(1) A retailer of a covered commodity that is farm-raised fish or wild fish may designate the covered commodity as having a United States country of origin only if:

(a) In the case of farm-raised fish, it is hatched, raised, harvested and processed in the United States; or

(b) In the case of wild fish, it is:

(i) Harvested in waters of the United States, a territory of the United States or a state, including the waters thereof; and

(ii) Processed in the United States, a territory of the United States or a state, including the waters thereof.

(2) The notice of country of origin for wild fish and farm-raised fish shall distinguish between wild fish and farm-raised fish.

HISTORY: Laws, 2009, ch. 321, § 5, eff from and after Mar. 16, 2009.

Editor's Notes — Laws of 2009, ch. 321, § 12, provides:

"This act shall take effect and be in force from and after the effective date of the federal rules or regulations on mandatory country of origin labeling promulgated by the U.S. Department of Agriculture."

On January 15, 2009, the U.S. Department of Agriculture, Agriculture Marketing

Service, published a final rule for all covered commodities (74 FR 2658). The rule became effective on March 16, 2009.

§ 69-1-311. Designation of country of origin of perishable agricultural products, ginseng, peanuts, pecans or macadamia nuts.

(1) A retailer of a covered commodity that is a perishable agricultural product, ginseng, peanut, pecan or macadamia nut may designate the covered commodity as having a United States country of origin only if the covered commodity is exclusively produced in the United States.

(2) If the covered commodity that is a perishable agricultural product, ginseng, peanut, pecan or macadamia nut is produced exclusively in the United States, designation of the state, region or locality of the United States where the commodity was produced shall be sufficient to identify the United States as the country of origin.

HISTORY: Laws, 2009, ch. 321, § 6, eff from and after Mar. 16, 2009.

Editor's Notes — Laws of 2009, ch. 321, § 12, provides:

"This act shall take effect and be in force from and after the effective date of the federal rules or regulations on mandatory country of origin labeling promulgated by the U.S. Department of Agriculture."

On January 15, 2009, the U.S. Department of Agriculture, Agriculture Marketing Service, published a final rule for all covered commodities (74 FR 2658). The rule became effective on March 16, 2009.

§ 69-1-313. Promulgation of rules and regulations; authority to enter certain premises to conduct label reviews.

(1) The commissioner is authorized to promulgate any rules and regulations as are necessary for the efficient enforcement of Sections 69-1-301 through 69-1-319.

(2) The commissioner shall have authority to enter the premises of any person that prepares, stores, handles or supplies any covered commodity for retail sale to conduct label reviews of covered commodities in order to determine compliance with Sections 69-1-301 through 69-1-319.

HISTORY: Laws, 2009, ch. 321, § 7, eff from and after Mar. 16, 2009.

Editor's Notes — Laws of 2009, ch. 321, § 12, provides:

"Sections 69-1-301 through 69-1-319 shall take effect and be in force from and after the effective date of the federal rules or regulations on mandatory country of origin labeling promulgated by the U.S. Department of Agriculture."

On January 15, 2009, the U.S. Department of Agriculture, Agriculture Marketing Service, published a final rule for all covered commodities (74 FR 2658). The rule became effective on March 16, 2009.

§ 69-1-315. Authority to enter into cooperative agreements with federal government.

The commissioner may cooperate with and enter into agreement with agencies of the federal government in order to carry out the purpose and provisions of Sections 69-1-301 through 69-1-319. In this cooperative effort, the commissioner is authorized to accept from the federal government any advisory assistance planning and any financial aid or other aid for the program.

HISTORY: Laws, 2009, ch. 321, § 8, eff from and after Mar. 16, 2009.

Editor's Notes — Laws of 2009, ch. 321, § 12, provides:
"Sections 69-1-301 through 69-1-319 shall take effect and be in force from and after the effective date of the federal rules or regulations on mandatory country of origin labeling promulgated by the U.S. Department of Agriculture."
On January 15, 2009, the U.S. Department of Agriculture, Agriculture Marketing Service, published a final rule for all covered commodities (74 FR 2658). The rule became effective on March 16, 2009.

§ 69-1-317. Authority to conduct audit of retailer that prepares, stores, handles or supplies covered commodities; retailer required to provide information to verify country of origin; injunctive relief for failure to provide information.

(1) The commissioner may conduct an audit of any person that prepares, stores, handles or supplies any covered commodity for retail sale to verify compliance with Sections 69-1-301 through 69-1-319.

(2) Any person subject to an audit under this section shall provide information to the commissioner that verifies the country of origin of the covered commodities. Records maintained in the course of the normal conduct of the business of those persons, including animal health papers, import or customs documents or producer affidavits, may serve as verification.

(3) The commissioner may seek injunctive relief if a person fails to provide the information required under this section.

HISTORY: Laws, 2009, ch. 321, § 9, eff from and after Mar. 16, 2009.

Editor's Notes — Laws of 2009, ch. 321, § 12, provides:
"Sections 69-1-301 through 69-1-319 shall take effect and be in force from and after the effective date of the federal rules or regulations on mandatory country of origin labeling promulgated by the U.S. Department of Agriculture."
On January 15, 2009, the U.S. Department of Agriculture, Agriculture Marketing Service, published a final rule for all covered commodities (74 FR 2658). The rule became effective on March 16, 2009.

§ 69-1-319. Written notification to retailer or supplier of violations; opportunity to correct violations; penalties; appeals.

(1) If the commissioner determines that a retailer is in violation of Sections 69-1-301 through 69-1-319, the commissioner shall:

(a) Notify the retailer of the determination of the commissioner; and

(b) Provide the retailer a thirty-day period, during which the retailer must take necessary steps to comply with Sections 69-1-301 through 69-1-319.

(2) If the commissioner determines that a supplier is in violation, the commissioner shall:

(a) Notify the supplier of the determination of the commissioner; and

(b) Provide the supplier a thirty-day period, beginning on the date on which the person receives the notice, during which the supplier shall:

(i) Provide the required information to the retailer; and

(ii) Provide to the commissioner a detailed plan of distribution of the required information to all retailers that are supplied covered commodities by the supplier.

(3) If at the end of the thirty-day period, the commissioner determines that the retailer or supplier failed to make a good faith effort to correct the violation or continues to be in violation, the commissioner, in addition to any other civil or criminal penalties, may fine the retailer or supplier not more than One Thousand Dollars ($1,000.00) for each violation. An appeal may be filed as provided under Section 69-25-59.

HISTORY: Laws, 2009, ch. 321, § 10, eff from and after Mar. 16, 2009.

Editor's Notes — Laws of 2009, ch. 321, § 12, provides:

"Sections 69-1-301 through 69-1-319 shall take effect and be in force from and after the effective date of the federal rules or regulations on mandatory country of origin labeling promulgated by the U.S. Department of Agriculture."

On January 15, 2009, the U.S. Department of Agriculture, Agriculture Marketing Service, published a final rule for all covered commodities (74 FR 2658). The rule became effective on March 16, 2009.

INTERAGENCY FARM TO SCHOOL COUNCIL

Sec.
69-1-351. Repealed.
69-1-353. Definitions.

§ 69-1-351. Repealed.

Repealed by its own terms effective July 1, 2015.

§ 69-1-351. [Laws, 2013, ch. 464, § 1, eff from and after passage (approved March 26, 2013.)]

Editor's Notes — Former § 69-1-351 created the Interagency Farm to School Council.

§ 69-1-353. Definitions.

For purposes of Sections 69-1-351 and 69-1-353, the following terms shall have the meanings herein ascribed unless the context clearly indicates otherwise:

(a) "Council" means the Interagency Farm to School Council created in Section 69-1-351.

(b) "Farm to school program" means any commercial relationship where a school purchases locally grown or locally raised agricultural products to serve in school meals and can include educational programs for students on local agriculture and nutrition;

(c) "Locally grown or locally raised agricultural products" means any food products grown on Mississippi farms or gardens, and includes, but is not limited to, fruits, vegetables, and nuts grown in Mississippi, meat, poultry, eggs, dairy, fish, seafood and other aquatic products produced in Mississippi, and products processed into value-added products that are grown or produced in Mississippi;

(d) "School" means any K-12 accredited public or private institution for learning and also includes public and private preschools.

HISTORY: Laws, 2013, ch. 464, § 2, eff from and after passage (approved March 26, 2013).

Editor's Notes — Section 69-1-351 referred to in the first two paragraphs, was repealed by its own terms effective July 1, 2015.

CERTIFICATES OF FREE SALE FOR AGRICULTURAL PRODUCTS EXPORTED FROM MISSISSIPPI

Sec.
69-1-371. Purpose.
69-1-373. Definitions.
69-1-375. Certificates of free trade for agricultural products grown or manufactured in, or distributed and sold from Mississippi; contents of request for certificate.

§ 69-1-371. Purpose.

A certificate of free sale is sometimes required for agricultural products from Mississippi to enter importing states and foreign countries. Persons exporting products from Mississippi are often asked by importing states and foreign countries to supply a certificate for products registered with or regulated by the Mississippi Department of Agriculture and Commerce. The purpose of Sections 69-1-371 through 69-1-375 is to authorize the Mississippi Department of Agriculture and Commerce to issue a certificate of free sale for agricultural products and those products registered with or regulated by the department for the purpose of exporting these products from Mississippi.

HISTORY: Laws, 2013, ch. 509, § 1, eff from and after passage (approved April 23, 2013).

§ 69-1-373. Definitions.

As used in Sections 69-1-371 through 69-1-375:

(a) "Agricultural products" means, but is not limited to, any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock that is marketed for human or livestock consumption or products that are used for agricultural purposes such as fertilizers and soil and plant amendments.

(b) "Department" means the Mississippi Department of Agriculture and Commerce.

HISTORY: Laws, 2013, ch. 509, § 2, eff from and after passage (approved April 23, 2013).

§ 69-1-375. Certificates of free trade for agricultural products grown or manufactured in, or distributed and sold from Mississippi; contents of request for certificate.

(1) The department is authorized to issue certificates of free sale for products grown or manufactured in Mississippi or distributed and sold from Mississippi. The business must be in good standing with the Mississippi Secretary of State's office.

(2) All requests for certificates must be in writing and shall contain at least the following information:

(a) The name under which the business is conducted and/or licensed;

(b) The physical address where the business is conducted;

(c) The type of operation conducted by the requesting establishment;

(d) The product's full, common or usual name of the product, the name of the manufacturer and the size of the product. Each product size shall be submitted as a separate product. Products on the certificate will be listed exactly as submitted;

(e) The country or countries to where the product is being shipped; and

(f) The number of certificates requested.

(3)(a) Labeling information, promotional information, website information, master formulas, marketing clearance letters, distribution records, and advertising affixed to, accompanying, or relating to the products may be required to be submitted for each product upon request by the department.

If labeling is in a foreign language, applicant shall provide English translation. Labeling information shall be in final format. Label prototypes and drafts shall not be accepted.

(b) The certificate will list the product name, the manufacturer's name, and the product size, if applicable.

(4) The department assumes no legal liability by issuing these certificates, but merely serves to promote the export of agricultural products from the State of Mississippi.

HISTORY: Laws, 2013, ch. 509, § 3, eff from and after passage (approved April 23, 2013).

CHAPTER 2.

MISSISSIPPI FARM REFORM ACT

General Provisions. 69-2-1
Voluntary Farm Debt Mediation Program. 69-2-43

GENERAL PROVISIONS

Sec.
69-2-1. Short title.
69-2-3. Legislative intent.
69-2-5. Information regarding programs and services; assistance provided by and donations to clearinghouse; report to Governor [Repealed effective July 1, 2023].
69-2-7. Encouragement of new crops and more profitable enterprises.
69-2-9. Definitions.
69-2-11. Emerging crop designations.
69-2-13. Emerging Crops Fund; loans for agribusinesses and small business concerns; loans for planning and development districts; program to assist minority business enterprises; loans for regional crafts projects; financing agribusiness programs; funds for rehabilitation, maintenance and advertising of Mississippi Farmers Central Market; program of loan guaranties on behalf of qualified nonprofit entities designated as community development financial institutions to encourage financing for loans in low-income communities; grants to certain agribusiness enterprises processing, drying, storing or shipping peanuts; program of loan guaranties on behalf of certain sweet potato growing and farming agribusinesses.
69-2-15. Interest loans from Emerging Crops Fund.
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69-2-19. Issuance of general obligation bonds for Emerging Crops Fund; limit on amount of bonds issued.
69-2-21. Full faith, credit, and taxing power of state pledged to payment of bonds.
69-2-23. Execution, delivery, conversion, redemption, and sale of general obligation bonds.
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69-2-31. Transfer and disbursement of proceeds of sale of bonds and notes.
69-2-33. Duties of Attorney General with respect to bonds and notes; costs of issuing bonds and notes.
69-2-35. Bonds and notes as legal investments for banks and other entities.
69-2-37. Tax treatment of bonds and notes, and income therefrom.
69-2-39. Empowering clause; exemption from limitations generally imposed on state obligations.
69-2-40. Limits on attorney fees; government officials and associates not to derive income from issuance of bonds or disposition of property.
69-2-41. Savings clause.

§ 69-2-1. Short title.

This chapter shall be known and may be cited as the Mississippi Farm Reform Act of 1987.

HISTORY: Laws, 1987, ch. 482, § 1, eff from and after passage (approved April 15, 1987).

§ 69-2-3. Legislative intent.

The Legislature hereby finds and declares that there exists within the state a serious emergency as a result of the nation's agricultural crisis and that there is a need to ensure that services are available for farmers, farm laborers, farm families and small businesses who have been adversely affected by the declining agricultural economy. Existing state programs need to be dedicated to meet these needs to the extent possible without creating additional administration. It is important that existing programs and services be coordinated into a network so that those in the agricultural and small business community can learn of these programs and services and obtain their benefits as expeditiously as possible.

HISTORY: Laws, 1987, ch. 482, § 2, eff from and after passage (approved April 15, 1987).

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 19 et seq.

CJS.
3 C.J.S., Agriculture §§ 72, 73.

§ 69-2-5. Information regarding programs and services; assistance provided by and donations to clearinghouse; report to Governor [Repealed effective July 1, 2023].

(1) The Mississippi Cooperative Extension Service shall act as a clearinghouse for the dissemination of information regarding programs and services which may be available to help those persons and businesses which have been adversely affected by the present emergency in the agricultural community. The Cooperative Extension Service shall develop a plan of assistance which shall identify all programs and services available within the state which can be of assistance to those affected by the present emergency. The Department of Agriculture and Commerce, Department of Finance and Administration, Department of Human Services, Department of Mental Health, State Department of Health, Board of Trustees of State Institutions of Higher Learning, Mississippi Community College Board, Research and Development Center, Mississippi Development Authority, Department of Employment Security, Office of the Governor, Board of Vocational and Technical Education, Mississippi Authority for Educational Television, and other agencies of the state which have programs and services that can be of assistance to those affected by the present emergency, shall provide information regarding their programs and services to the Cooperative Extension Service for use in the clearinghouse. The types of programs and services shall include, but not be limited to, financial counseling, farm and small business management, employment services, labor market information, job retraining, vocational and technical

training, food stamp programs, personal counseling, health services, and free or low cost legal services. The clearinghouse shall provide a single contact point to provide program information and referral services to individuals interested or needing services from state-funded assistance programs affecting agriculture, horticulture, aquaculture and other agribusinesses or related industries. Such assistance information shall identify all monies available under the Small Business Financing Act, the Business Investment Act, the Emerging Crops Fund legislation and any other sources which may be used singularly or combined, to provide a comprehensive financing package. The provisions of this section in establishing a single contact point for information and referral services shall not be construed to authorize the hiring of additional personnel.

(2) The Cooperative Extension Service may accept monetary or in-kind contributions, gifts and grants for the establishment or operation of the clearinghouse.

(3) The Cooperative Extension Service shall establish a method for the dissemination of information to those who can be benefited by the existing programs and services of the state.

(4) The Cooperative Extension Service shall file an annual report with the Governor, Lieutenant Governor and Speaker of the House of Representatives regarding the efforts which have been made in the clearinghouse operation. The report shall also recommend any additional measures, including legislation, which may be needed or desired in providing programs and benefits to those affected by the agricultural emergency.

HISTORY: Laws, 1987, ch. 482, § 3; Laws, 1988, ch. 503; Laws, 2004, ch. 572, § 56; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 56; reenacted and amended, Laws, 2010, ch. 559, § 56; reenacted without change, Laws, 2011, ch. 471, § 57; Laws, 2014, ch. 397, § 62, eff from and after July 1, 2014; reenacted without change, Laws, 2019, ch. 451, § 56, eff from and after passage (approved April 3, 2019).

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Cooperative Extension Service, see § 19-5-63.

Mississippi Community College Board generally, see §§ 37-4-1 et seq.

Board of Vocational and Technical Education, see § 37-31-207.

Mississippi Authority for Educational Television, see § 37-63-13.

Board of Trustees of State Institutions of Higher Learning, see § 37-101-15.

State Board of Health, see § 41-3-15.

Department of Mental Health, see § 41-4-5.

Small Business Financing Act, see §§ 57-10-201 through 57-10-261.

Business Investment Act, see §§ 57-61-1 through 57-61-44.

Department of Agriculture and Commerce, see § 69-1-1.

Emerging Crop Fund legislation, see § 69-2-7 et seq.

Employment Security Commission, see § 71-5-115.

Federal Aspects— Federal farm credit system, see 12 USCS § 2001 et seq.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture § 24.

CJS.
3 C.J.S., Agriculture §§ 72, 73.

§ 69-2-7. Encouragement of new crops and more profitable enterprises.

(1) The Legislature states that the purpose of Sections 69-2-7 through 69-2-17 of this chapter is to encourage the production of crops (plant or animal) on Mississippi farms which have not been previously produced commercially.

(2) It is the intent of the Legislature to encourage the farm sector of this state to shift from enterprises with low profit margins to those with higher profit margins.

HISTORY: Laws, 1987, ch. 482, § 4, eff from and after passage (approved April 15, 1987).

§ 69-2-9. Definitions.

For the purposes of Sections 69-2-7 through 69-2-41, the following words shall have the meanings ascribed in this section unless the context otherwise requires:

(a) "Department" means the Mississippi Department of Economic and Community Development.

(b) "Emerging crop" means any new, nontraditional plant or animal crop (as designated by a board consisting of the executive directors of the department, the Mississippi Cooperative Extension Service and the Mississippi Agricultural and Forestry Experiment Station) or as specified in Section 69-2-11 which has a development time from beginning of production to harvest or initial sale of the product of not more than five (5) years.

(c) "Farmer" means a resident of Mississippi who engages in or wishes to engage in the commercial production of an emerging crop on land in Mississippi. This term shall include individuals, partnerships and corporations.

(d) "Fund" means the Emerging Crops Fund established in Section 69-2-13.

(e) "Interest loan" means a loan made from the fund to pay the interest on a loan made by a lender to a farmer to finance the nonland capital costs of establishing production of an emerging crop.

(f) "Lender" means a commercial bank, savings bank, savings and loan association, federal land bank, farm credit bank, production credit association or other farm credit agency which is domiciled or qualified to do business in Mississippi, or the Farmers Home Administration.

(g) "Agribusiness" means any agricultural, aquacultural, horticultural, industrial, manufacturing, research and development or processing enterprise or enterprises.

HISTORY: Laws, 1987, ch. 482, § 5; Laws, 1988, ch. 356, § 1; Laws, 1988, ch.

580, § 18; Laws, 1990, ch. 570, § 17; Laws, 1996, ch. 415, § 1, eff from and after passage (approved March 25, 1996).

Cross References — Mississippi Department of Economic and Community Development, see § 57-1-1 et seq.
Federal Aspects— Farmers Home Administration, see 7 USCS §§ 1981 et seq.

§ 69-2-11. Emerging crop designations.

Emerging crop designations shall include, but not be limited to:

(a) Blueberries;

(b) Muscadines;

(c) Christmas trees;

(d) Aquaculture, including any species from the Gulf of Mexico and its tributaries;

(e) Horticulture;

(f) Rabbit farming and processing; and

(g) Others designated by the Board of Economic Development or Legislature.

HISTORY: Laws, 1987, ch. 482, § 6; Laws, 1996, ch. 415, § 2; Laws, 1998, ch. 536, § 8, eff from and after passage (approved April 9, 1998).

Editor's Notes — Section 57-1-54 provides that the Mississippi Development Authority shall be the Department of Economic and Community Development, and that whenever the term "Mississippi Department of Economic and Community Development," "Mississippi Department of Economic Development," or any variation thereof, appears in any law the same shall mean the Mississippi Development Authority.
Cross References — Definition of "emerging crop," see § 69-2-9.

§ 69-2-13. Emerging Crops Fund; loans for agribusinesses and small business concerns; loans for planning and development districts; program to assist minority business enterprises; loans for regional crafts projects; financing agribusiness programs; funds for rehabilitation, maintenance and advertising of Mississippi Farmers Central Market; program of loan guaranties on behalf of qualified nonprofit entities designated as community development financial institutions to encourage financing for loans in low-income communities; grants to certain agribusiness enterprises processing, drying, storing or shipping peanuts; program of loan guaranties on behalf of certain sweet potato growing and farming agribusinesses.

(1) There is hereby established in the State Treasury a fund to be known as the "Emerging Crops Fund," which shall be used to pay the interest on loans made to farmers for nonland capital costs of establishing production of

emerging crops on land in Mississippi, and to make loans and grants which are authorized under this section to be made from the fund. The fund shall be administered by the Mississippi Development Authority. A board comprised of the directors of the authority, the Mississippi Cooperative Extension Service, the Mississippi Small Farm Development Center and the Mississippi Agricultural and Forestry Experiment Station, or their designees, shall develop definitions, guidelines and procedures for the implementation of this chapter. Funds for the Emerging Crops Fund shall be provided from the issuance of bonds or notes under Sections 69-2-19 through 69-2-37 and from repayment of interest loans made from the fund.

(2)(a) The Mississippi Development Authority shall develop a program which gives fair consideration to making loans for the processing and manufacturing of goods and services by agribusiness, greenhouse production horticulture, and small business concerns. It is the policy of the State of Mississippi that the Mississippi Development Authority shall give due recognition to and shall aid, counsel, assist and protect, insofar as is possible, the interests of agribusiness, greenhouse production horticulture, and small business concerns. To ensure that the purposes of this subsection are carried out, the Mississippi Development Authority shall loan not more than One Million Dollars ($1,000,000.00) to finance any single agribusiness, greenhouse production horticulture, or small business concern. Loans made pursuant to this subsection shall be made in accordance with the criteria established in Section 57-71-11.

(b) The Mississippi Development Authority may, out of the total amount of bonds authorized to be issued under this chapter, make available funds to any planning and development district in accordance with the criteria established in Section 57-71-11. Planning and development districts which receive monies pursuant to this provision shall use such monies to make loans to private companies for purposes consistent with this subsection.

(c) The Mississippi Development Authority is hereby authorized to engage legal services, financial advisors, appraisers and consultants if needed to review and close loans made hereunder and to establish and assess reasonable fees, including, but not limited to, liquidation expenses.

(d) The State Auditor may conduct performance and compliance audits under this chapter according to Section 7-7-211(o) and may bill the oversight agency.

(3)(a) The Mississippi Development Authority shall, in addition to the other programs described in this section, provide for the following programs of loans to be made to agribusiness or greenhouse production horticulture enterprises for the purpose of encouraging thereby the extension of conventional financing and the issuance of letters of credit to such agribusiness or greenhouse production horticulture enterprises by private institutions. Monies to make such loans by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund.

(b) The Mississippi Development Authority may make loans to agribusiness or greenhouse production horticulture enterprises. The amount of any loan to any single enterprise under this paragraph (b) shall not exceed twenty percent (20%) of the total cost of the project for which financing is sought or Two Hundred Fifty Thousand Dollars ($250,000.00), whichever is less. No interest shall be charged on such loans, and only the amount actually loaned shall be required to be repaid. Repayments shall be deposited into the Emerging Crops Fund.

(c) The Mississippi Development Authority also may make loans under this subsection (3) to existing agribusiness or greenhouse production horticulture enterprises for the purpose of assisting such enterprises to make upgrades, renovations, repairs and other improvements to their equipment, facilities and operations, which shall not exceed Two Hundred Fifty Thousand Dollars ($250,000.00) or thirty percent (30%) of the total cost of the project for which financing is sought, whichever is less. No interest shall be charged on loans made under this paragraph, and only the amount actually loaned shall be required to be repaid. Repayments shall be deposited into the Emerging Crops Fund.

(d) The maximum aggregate amount of loans that may be made under this subsection (3) to any one (1) agribusiness shall be not more than Five Hundred Thousand Dollars ($500,000.00).

(4)(a) Through June 30, 2010, the Mississippi Development Authority may loan or grant to qualified planning and development districts, and to small business investment corporations, bank-based community development corporations, the Recruitment and Training Program, Inc., the City of Jackson Business Development Loan Fund, the Lorman Southwest Mississippi Development Corporation, the West Jackson Community Development Corporation, the East Mississippi Development Corporation, and other entities meeting the criteria established by the Mississippi Development Authority (all referred to hereinafter as "qualified entities"), funds for the purpose of establishing loan revolving funds to assist in providing financing for minority economic development. The monies loaned or granted by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund and shall not exceed Twenty-nine Million Dollars ($29,000,000.00) in the aggregate. Planning and development districts or qualified entities which receive monies pursuant to this provision shall use such monies to make loans to minority business enterprises consistent with criteria established by the Mississippi Development Authority. Such criteria shall include, at a minimum, the following:

(i) The business enterprise must be a private, for-profit enterprise.

(ii) If the business enterprise is a proprietorship, the borrower must be a resident citizen of the State of Mississippi; if the business enterprise is a corporation or partnership, at least fifty percent (50%) of the owners must be resident citizens of the State of Mississippi.

(iii) The borrower must have at least five percent (5%) equity interest in the business enterprise.

(iv) The borrower must demonstrate ability to repay the loan.

(v) The borrower must not be in default of any previous loan from the state or federal government.

(vi) Loan proceeds may be used for financing all project costs associated with development or expansion of a new small business, including fixed assets, working capital, start-up costs, rental payments, interest expense during construction and professional fees related to the project.

(vii) Loan proceeds shall not be used to pay off existing debt for loan consolidation purposes; to finance the acquisition, construction, improvement or operation of real property which is to be held primarily for sale or investment; to provide for, or free funds, for speculation in any kind of property; or as a loan to owners, partners or stockholders of the applicant which do not change ownership interest by the applicant. However, this does not apply to ordinary compensation for services rendered in the course of business.

(viii) The maximum amount that may be loaned to any one (1) borrower shall be Two Hundred Fifty Thousand Dollars ($250,000.00).

(ix) The Mississippi Development Authority shall review each loan before it is made, and no loan shall be made to any borrower until the loan has been reviewed and approved by the Mississippi Development Authority.

(b) For the purpose of this subsection, the term "minority business enterprise" means a socially and economically disadvantaged small business concern, organized for profit, performing a commercially useful function which is owned and controlled by one or more minorities or minority business enterprises certified by the Mississippi Development Authority, at least fifty percent (50%) of whom are resident citizens of the State of Mississippi. Except as otherwise provided, for purposes of this subsection, the term "socially and economically disadvantaged small business concern" shall have the meaning ascribed to such term under the Small Business Act (15 USCS, Section 637(a)), or women, and the term "owned and controlled" means a business in which one or more minorities or minority business enterprises certified by the Mississippi Development Authority own sixty percent (60%) or, in the case of a corporation, sixty percent (60%) of the voting stock, and control sixty percent (60%) of the management and daily business operations of the business. However, an individual whose personal net worth exceeds Five Hundred Thousand Dollars ($500,000.00) shall not be considered to be an economically disadvantaged individual.

From and after July 1, 2010, monies not loaned or granted by the Mississippi Development Authority to planning and development districts or qualified entities under this subsection, and monies not loaned by planning and development districts or qualified entities, shall be deposited to the credit of the sinking fund created and maintained in the State Treasury for the retirement of bonds issued under Section 69-2-19.

(c) Notwithstanding any other provision of this subsection to the contrary, if federal funds are not available for commitments made by a planning and development district to provide assistance under any federal loan program administered by the planning and development district in coordination with the Appalachian Regional Commission or Economic Development Administration, or both, a planning and development district may use funds in its loan revolving fund, which have not been committed otherwise to provide assistance, for the purpose of providing temporary funding for such commitments. If a planning and development district uses uncommitted funds in its loan revolving fund to provide such temporary funding, the district shall use funds repaid to the district under the temporarily funded federal loan program to replenish the funds used to provide the temporary funding. Funds used by a planning and development district to provide temporary funding under this paragraph (c) must be repaid to the district's loan revolving fund no later than twelve (12) months after the date the district provides the temporary funding. A planning and development district may not use uncommitted funds in its loan revolving fund to provide temporary funding under this paragraph (c) on more than two (2) occasions during a calendar year. A planning and development district may provide temporary funding for multiple commitments on each such occasion. The maximum aggregate amount of uncommitted funds in a loan revolving fund that may be used for such purposes during a calendar year shall not exceed seventy percent (70%) of the uncommitted funds in the loan revolving fund on the date the district first provides temporary funding during the calendar year.

(d) If the Mississippi Development Authority determines that a planning and development district or qualified entity has provided loans to minority businesses in a manner inconsistent with the provisions of this subsection, then the amount of such loans so provided shall be withheld by the Mississippi Development Authority from any additional grant funds to which the planning and development district or qualified entity becomes entitled under this subsection. If the Mississippi Development Authority determines, after notifying such planning and development district or qualified entity twice in writing and providing such planning and development district or qualified entity a reasonable opportunity to comply, that a planning and development district or qualified entity has consistently failed to comply with this subsection, the Mississippi Development Authority may declare such planning and development district or qualified entity in default under this subsection and, upon receipt of notice thereof from the Mississippi Development Authority, such planning and development district or qualified entity shall immediately cease providing loans under this subsection, shall refund to the Mississippi Development Authority for distribution to other planning and development districts or qualified entities all funds held in its revolving loan fund and, if required by the Mississippi Development Authority, shall convey to the Mississippi Development Authority all administrative and management control of loans provided by it under this subsection.

(e) If the Mississippi Development Authority determines, after notifying a planning and development district or qualified entity twice in writing and providing copies of such notification to each member of the Legislature in whose district or in a part of whose district such planning and development district or qualified entity is located and providing such planning and development district or qualified entity a reasonable opportunity to take corrective action, that a planning and development district or qualified entity administering a revolving loan fund under the provisions of this subsection is not actively engaged in lending as defined by the rules and regulations of the Mississippi Development Authority, the Mississippi Development Authority may declare such planning and development district or qualified entity in default under this subsection and, upon receipt of notice thereof from the Mississippi Development Authority, such planning and development district or qualified entity shall immediately cease providing loans under this subsection, shall refund to the Mississippi Development Authority for distribution to other planning and development districts or qualified entities all funds held in its revolving loan fund and, if required by the Mississippi Development Authority, shall convey to the Mississippi Development Authority all administrative and management control of loans provided by it under this subsection.

(5) The Mississippi Development Authority shall develop a program which will assist minority business enterprises by guaranteeing bid, performance and payment bonds which such minority businesses are required to obtain in order to contract with federal agencies, state agencies or political subdivisions of the state. The Mississippi Development Authority may secure letters of credit, as determined necessary by the authority, to guarantee bid, performance and payment bonds pursuant to this subsection. Monies for such program shall be drawn from the monies allocated under subsection (4) of this section to assist the financing of minority economic development and shall not exceed Three Million Dollars ($3,000,000.00) in the aggregate. The Mississippi Development Authority may promulgate rules and regulations for the operation of the program established pursuant to this subsection. For the purpose of this subsection (5), the term "minority business enterprise" has the meaning assigned such term in subsection (4) of this section.

(6) The Mississippi Development Authority may loan or grant to public entities and to nonprofit corporations funds to defray the expense of financing (or to match any funds available from other public or private sources for the expense of financing) projects in this state which are devoted to the study, teaching and/or promotion of regional crafts and which are deemed by the authority to be significant tourist attractions. The monies loaned or granted shall be drawn from the Emerging Crops Fund and shall not exceed Two Hundred Fifty Thousand Dollars ($250,000.00) in the aggregate.

(7) Through June 30, 2006, the Mississippi Development Authority shall make available to the Mississippi Department of Agriculture and Commerce funds for the purpose of establishing loan revolving funds and other methods of financing for agribusiness programs administered under the Mississippi Agribusiness Council Act of 1993. The monies made available by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund and shall not exceed One Million Two Hundred Thousand Dollars ($1,200,000.00) in the aggregate. The Mississippi Department of Agriculture and Commerce shall establish control and auditing procedures for use of these

funds. These funds will be used primarily for quick payment to farmers for vegetable and fruit crops processed and sold through vegetable processing plants associated with the Department of Agriculture and Commerce and the Mississippi State Extension Service.

(8) From and after July 1, 1996, the Mississippi Development Authority shall make available to the Mississippi Small Farm Development Center One Million Dollars ($1,000,000.00) to be used by the center to assist small entrepreneurs as provided in Section 37-101-25, Mississippi Code of 1972. The monies made available by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund.

(9) [Repealed]

(10) The Mississippi Development Authority shall make available to the Small Farm Development Center at Alcorn State University funds in an aggregate amount not to exceed Three Hundred Thousand Dollars ($300,000.00), to be drawn from the cash balance of the Emerging Crops Fund. The Small Farm Development Center at Alcorn State University shall use such funds to make loans to producers of sweet potatoes and cooperatives anywhere in the State of Mississippi owned by sweet potato producers to assist in the planting of sweet potatoes and the purchase of sweet potato production and harvesting equipment. A report of the loans made under this subsection shall be furnished by January 15 of each year to the Chairman of the Senate Agriculture Committee and the Chairman of the House Agriculture Committee.

(11) The Mississippi Development Authority shall make available to the Mississippi Department of Agriculture and Commerce "Make Mine Mississippi" program an amount not to exceed One Hundred Fifty Thousand Dollars ($150,000.00) to be drawn from the cash balance of the Emerging Crops Fund.

(12) The Mississippi Development Authority shall make available to the Mississippi Department of Agriculture and Commerce an amount not to exceed One Hundred Fifty Thousand Dollars ($150,000.00) to be drawn from the cash balance of the Emerging Crops Fund to be used for the rehabilitation and maintenance of the Mississippi Farmers Central Market in Jackson, Mississippi.

(13) The Mississippi Development Authority shall make available to the Mississippi Department of Agriculture and Commerce an amount not to exceed Twenty-five Thousand Dollars ($25,000.00) to be drawn from the cash balance of the Emerging Crops Fund to be used for advertising purposes related to the Mississippi Farmers Central Market in Jackson, Mississippi.

(14)(a) The Mississippi Development Authority shall, in addition to the other programs described in this section, provide for a program of loan guaranties to be made on behalf of any nonprofit entity qualified under Section 501(c)(3) of the Internal Revenue Code and certified by the United States Department of the Treasury as a community development financial institution for the purpose of encouraging the extension of financing to such an entity which financing the entity will use to make funds available to other entities for the purpose of making loans available in low-income communities in Mississippi. Monies to make such loan guaranties by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund and shall not exceed Two Million Dollars ($2,000,000.00) in the aggregate. The amount of a loan guaranty on behalf of such an entity under this subsection (14) shall not exceed Two Million Dollars ($2,000,000.00). Assistance received by an entity under this subsection (14) shall not disqualify the entity from obtaining any other assistance under this chapter.

(b) An entity desiring assistance under this subsection (14) must submit an application to the Mississippi Development Authority. The application must include any information required by the Mississippi Development Authority.

(c) The Mississippi Development Authority shall have all powers necessary to implement and administer the program established under this subsection (14), and the Mississippi Development Authority shall promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, necessary for the implementation of this subsection (14).

(15)(a) The Mississippi Development Authority shall, in addition to the other programs described in this section, provide for a program of grants to agribusiness enterprises that process, dry, store or ship peanuts and if the enterprise has invested prior to April 17, 2009, a minimum of Six Million Dollars ($6,000,000.00) in land, facilities and equipment in this state that are utilized to process, dry, store or ship peanuts. Monies to make such grants by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund and shall not exceed One Million Dollars ($1,000,000.00) in the aggregate. The amount of a grant under this subsection (15) shall not exceed One Million Dollars ($1,000,000.00).

(b) An entity desiring assistance under this subsection (15) must submit an application to the Mississippi Development Authority. The application must include a description of the project for which assistance is requested, the cost of the project for which assistance is requested, the amount of assistance requested and any other information required by the Mississippi Development Authority.

(c) As a condition of the receipt of a grant under this subsection (15), an entity must agree to remain in business in this state for not less than five (5) years and must meet other conditions established by the Mississippi Development Authority to ensure that the assistance results in an economic benefit to the state. The Mississippi Development Authority shall require that binding commitments be entered into requiring that:

(i) The minimum requirements provided for in this subsection (15) and the conditions established by the Mississippi Development Authority are met; and

(ii) If such commitments and conditions are not met, all or a portion of the funds provided pursuant to this subsection (15) shall be repaid.

(d) The Mississippi Development Authority shall have all powers necessary to implement and administer the program established under this subsection (15), and the Mississippi Development Authority shall promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, necessary for the implementation of this subsection (15).

(16)(a) The Mississippi Development Authority, in addition to the other programs described in this section, shall provide for a program of loan guaranties to be made on behalf of certain agribusinesses engaged in sweet potato growing and farming for the purpose of encouraging thereby the extension of conventional financing and the issuance of letters of credit to such agribusinesses by lenders. The amount of a loan guaranty made on behalf of such an agribusiness shall be ninety percent (90%) of the amount of assistance made available by a lender for the purposes authorized under this subsection (16). Monies to make such loan guaranties by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund and shall not exceed Seventeen Million Dollars ($17,000,000.00) in the aggregate.

(b) In order to be eligible for assistance under this subsection (16) an agribusiness must:

(i) Have been actively engaged in sweet potato growing and farming in this state before January 1, 2010;

(ii) Have incurred a disaster-related loss for sweet potato growing and farming purposes for calendar year 2009, as determined by a lender;

(iii) Agree to obtain and maintain federal Noninsured Agricultural Program (NAP) insurance coverage for the outstanding balance of any assistance received under this subsection (16); and

(iv) Satisfy underwriting criteria established by a lender related to loans under this subsection (16).

(c)(i) An entity desiring assistance under this subsection must submit an application for assistance to a lender not later than August 1, 2010. The application must include:

1. Information verifying the length of time the applicant has been actively engaged in sweet potato growing and farming in this state;

2. Information regarding the number of acres used by the applicant for sweet potato growing and farming purposes during the 2009 calendar year, as certified to by the Farm Services Authority (FSA) or the Mississippi Department of Agriculture and Commerce (MDAC), and the number of acres the applicant intends to use for such purposes during the 2010 calendar year;

3. The average cost per acre incurred by the applicant for sweet potato growing and farming purposes during the 2009 calendar year, as certified to by the FSA or MDAC, and an estimate of the average cost per acre to be incurred by the applicant for such purposes during the calendar year for which application is made;

4. The amount of assistance requested;

5. A statement from the applicant agreeing that he will obtain and maintain NAP insurance coverage for the outstanding balance of any assistance received under this subsection (16); and

6. Any other information required by the lender and/or the MDA.

(ii) The lender shall review the application for assistance and determine whether the applicant qualifies for assistance under this subsection (16). If the lender determines that the applicant qualifies for assistance, the lender shall loan funds to the applicant subject to the provisions of this subsection (16).

(d) Loans made under this subsection (16) shall be subject to the following conditions:

(i) The maximum amount of a loan to a borrower shall not exceed One Thousand Seven Hundred Dollars ($1,700.00) per acre and shall exclude any machinery and equipment costs.

(ii) The proceeds of a loan may be used only for paying a borrower's sweet potato planting, production and harvesting costs, excluding machinery and equipment costs.

(iii) The proceeds of a loan may not be used to repay, satisfy or finance existing debt.

(iv) The time allowed for repayment of a loan shall not be more than five (5) years, and there shall be no penalty, fee or other charge imposed for the prepayment of a loan.

(e) The receipt of assistance by a person or other entity under any other program described in this section shall not disqualify the person or entity from obtaining a loan under the program established in this subsection (16) if the person or entity is otherwise eligible under this program. In addition, the receipt of a loan by a person or other entity under the program established under this subsection (16) shall not disqualify the person or entity from obtaining assistance under any other program described in this section.

(f) The Mississippi Development Authority shall have all powers necessary to implement and administer the program established under this subsection (16), and the Mississippi Development Authority shall promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, necessary for the implementation of this subsection (16).

HISTORY: Laws, 1987, ch. 482, § 7; Laws, 1988, ch. 580, § 19; Laws, 1989, ch. 524, § 29; Laws, 1990, ch. 570, § 18; Laws, 1991, ch. 584, § 6,; Laws, 1992, ch. 548, § 11; Laws, 1993, ch. 548, § 8; Laws, 1993, ch. 619, § 9; Laws, 1994, ch. 560, § 4; Laws, 1995, ch. 548, § 10; Laws, 1996, ch. 553, § 5; Laws, 1997, ch. 582, § 1; Laws, 1998, ch. 536, § 9; Laws, 2000, ch. 584, § 4; Laws, 2000, ch. 620, § 1; Laws, 2001, ch. 540, § 1; Laws, 2002, ch. 536, § 1; Laws, 2003, ch. 504, § 1; Laws, 2004, ch. 360, § 1; Laws, 2004, 3rd Ex Sess, ch. 1, § 95; Laws, 2006, ch. 564, § 1; Laws, 2007, ch. 586, § 1; Laws, 2008, ch. 506, § 6; Laws, 2009, ch. 557, § 31; Laws, 2010, ch. 429, § 1; Laws, 2010, ch. 511, § 27; Laws, 2011, ch. 420, § 1; Laws, 2012, ch. 415, § 1; Laws, 2013, ch. 386, § 1; Laws, 2014, ch. 427, § 9, eff from and after July 1, 2014; Laws, 2020, ch. 337, § 1, eff from and after July 1, 2020.

Joint Legislative Committee Note — Section 4 of ch. 584, Laws, 2000, effective from and after its passage (approved May 20, 2000), amended this section. Section 1 of ch. 620, Laws, 2000, effective July 1, 2000, also amended this section. As set out above, this section reflects the language of Section 1 of ch. 620, Laws, 2000, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Section 1 of ch. 309, Laws, 2003, effective from and after passage (approved March 7, 2003), amended this section. Section 1 of ch. 504, Laws, 2003, effective from and after passage (approved April 15, 2003), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 504, Laws 2003, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the later approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 27 of ch. 511, Laws of 2010, effective upon passage (approved April 13, 2010), amended this section. Section 1 of ch. 429, Laws of 2010, effective upon passage (approved March 24, 2010), also amended this section. As set out above, this section reflects the language of Section 27 of ch. 511, Laws of 2010, which contains language that specifically provides that it supersedes § 69-2-13 as amended by Laws of 2010, ch. 429.

Editor's Notes — Laws of 1989, ch. 524, § 36, provides as follows:

"SECTION 36. The repeal or amendment of this act shall not reduce the terms of any tax reduction, special tax incentive or financial assistance agreed upon pursuant to official action by the Department of Economic Development, the State Tax Commission or other appropriate agency of the state or political subdivision thereof prior to the effective date of such repeal or amendment."

Laws of 1990, ch. 570, § 20, effective July 1, 1990, provides as follows:

"SECTION 20. (1) Any attorney's fees paid as the result of the issuance of bonds under this act shall be in compliance with the limits on attorney's fees for bond issues as adopted by the State Bond Commission. Attorney's fees paid as the result of the issuance of bonds under this act shall be subject to negotiation but in no event shall exceed the limits established by the State Bond Commission. A detailed accounting of all expenses incurred by all persons, firms, corporations, associations or other organizations involved in such bond issues shall be submitted to the State Bond Commission within ninety (90) days after the issuance of such bonds and shall be a matter of public record.

"(2) No member of the Legislature, elected official or appointed official, or any partner or associate of any member of the Legislature, elected official or appointed official, shall derive any income from the issuance of any bonds or the disposition of any property under this act contrary to the provisions of Section 109, Mississippi Constitution of 1890, or Article 3, Chapter 4, Title 25, Mississippi Code of 1972.

"(3) In connection with the issuance and sale of bonds authorized under this act, the State Bond Commission shall select a bond attorney or attorneys who are listed in the 'Directory of Municipal Bond Dealers of the United States' and who are members in good standing of the Mississippi State Bar Association and licensed to practice law in the State of Mississippi; however, upon a finding by the commission spread on its official minutes that the public interest will best be served thereby, the commission may select any bond attorney or attorneys listed in the 'Directory of Municipal Bond Dealers of the United States.' "

Laws, 2004, 3rd Ex Sess, ch. 1, § 228 provides:

"SECTION 228. Except as otherwise provided in this act, any entity using funds authorized and made available under Chapter 1, 2004 Third Extraordinary Session, is authorized, in its discretion, to set aside not more than twenty percent (20%) of such funds for expenditure with small business concerns owned and controlled by socially and economically disadvantaged individuals. The term "socially and economically disadvantaged individuals" shall have the meaning ascribed to such term under Section

8(d) of the Small Business Act (15 USCS, Section 637(d)) and relevant subcontracting regulations promulgated pursuant thereto; except that women shall be presumed to be socially and economically disadvantaged individuals for the purposes of this section."

Subsection (9) was repealed by its own terms, effective June 30, 2006.

Amendment Notes — The 2020 amendment, in (3)(b) and (c), substituted "Two Hundred Fifty Thousand Dollars ($250,000.00)" for "Two Hundred Thousand Dollars ($200,000.00)"; and in (3)(d), substituted "Five Hundred Thousand Dollars ($500,000.00)." "for "Four Hundred Thousand Dollars ($400,000.00)."

Cross References — Mississippi Cooperative Extension Service, see § 19-5-63.

Mississippi Administrative Procedure Law, see §§ 25-43-1.101 et seq.

Mississippi Agricultural and Forestry Experiment Station, see § 37-113-17.

Mississippi Department of Economic and Community Development, see § 57-1-1 et seq.

Conferring of powers necessary to carry out provisions of §§ 69-2-13 through 69-2-37, see § 69-2-39.

Savings clause effective upon declaration of invalidity of any portion of §§ 69-2-13 through 69-2-39, see § 69-2-41.

Proceeds of additional bonds issued under §§ 69-2-19 through 69-2-39 to be used solely for the purposes described in subsection (16) of this section, see § 69-2-19.

OPINIONS OF THE ATTORNEY GENERAL

The issuance of a written loan commitment, without lending money and creating a debtor-creditor relationship, does not constitute a loan, and the provisions of subsection (4) of this section requiring deposit in the State Treasury of monies not loaned or granted are applicable to any funds held pursuant thereto by the Mississippi Business Finance Corporation (MBFC) as of July 1, 1999; thus, MBFC will be in violation of such sunset provisions if it holds monies for the purpose of funding the loans or grants after June 30, 1999. Pumphrey, June 4, 1999, A.G. Op. #99-0271.

Subsection (4) of this section permits Mississippi Business Finance Corporation to make a grant of funds to qualified lending entities which have made minority business enterprise loans funded with repayments from previous loans, so long as the minority business loans for which the grant is made meet the requirements of subsection (4) of this section. Pumphrey, June 4, 1999, A.G. Op. #99-0271.

A letter of credit arrangement goes beyond the authority granted to Mississippi Development Authority, express or necessarily implied, by subsection (5) of this section. Speed, Jan. 28, 2005, A.G. Op. 04-0640.

§ 69-2-15. Interest loans from Emerging Crops Fund.

(1) Any lender which has made a loan to a farmer to finance the nonland capital costs of establishing production of an emerging crop on land in Mississippi may make application to the department for payment of the interest on the loan during the period from beginning of production to harvest or initial sale of the product, which payment shall be made from the fund. The maximum amount of interest loans from the fund for the benefit of any one (1) farmer shall be Fifty Thousand Dollars ($50,000.00). During the period that the department pays the interest on a loan, the maximum rate of interest which may be charged on the loan by the lender shall be four percent (4%) per annum above the New York prime rate. By payment of the interest on a loan, neither the department nor the State of Mississippi shall be a guarantor of the

loan, but the state shall have a lien junior to any lien that the lender may have on the loan.

(2) If a farmer defaults on the interest loan the Attorney General of the State of Mississippi shall take the necessary legal action, as soon as practicable, to recover the monies due and owing to the State of Mississippi. A suit against a defaulting party under this section may be brought in the county in which the lender is located, or in any Hinds County court.

HISTORY: Laws, 1987, ch. 482, § 8; Laws, 1988, ch. 356, § 2, eff from and after passage (approved April 15, 1988).

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 11, 12, 19 et seq.

CJS.
3 C.J.S., Agriculture §§ 72, 73.

§ 69-2-17. Repayment of interest loans from Emerging Crops Fund.

(1) Repayment of the interest loan from the fund shall be deferred for a period of time not more than five (5) years or the time when the emerging crop should reach maturity. The schedule for repayment of the interest loan shall be a period of time equal to two (2) times the period that interest is paid on the loan for that emerging crop from the fund. No interest shall be charged on interest loans from the fund, and only the amount actually loaned from the fund shall be required to be repaid.

(2) Repayment of interest loans from the fund shall be made to the lender, which shall remit the amounts collected to the department for deposit into the fund. However, if the repayment period for an interest loan exceeds the time for repayment of the principal loan amount to the lender, when the final principal payment is made to the lender all subsequent interest loan payments shall be made by the farmer, directly to the department to be deposited into the fund.

(3) The lender shall notify the department, as soon as possible, of any change in the principal loan status, release of collateral or any other matter that may adversely affect the security of the state's loan.

HISTORY: Laws, 1987, ch. 482, § 9; Laws, 1988, ch. 356, § 3, eff from and after passage (approved April 15, 1988).

§ 69-2-19. Issuance of general obligation bonds for Emerging Crops Fund; limit on amount of bonds issued.

(1) The Mississippi Development Authority is authorized, at one time, or from time to time, to declare by resolution the necessity for issuance of negotiable general obligation bonds of the State of Mississippi to provide funds for the Emerging Crops Fund established in Section 69-2-13. Upon the adoption of a resolution by the board, declaring the necessity for the issuance

of any part or all of the general obligation bonds authorized by Sections 69-2-19 through 69-2-39, the authority shall deliver a certified copy of its resolution or resolutions to the State Bond Commission. Upon receipt of same, the State Bond Commission, in its discretion, shall act as the issuing agent, prescribe the form of the bonds, advertise for and accept bids, issue and sell the bonds so authorized to be sold, and do any and all other things necessary and advisable in connection with the issuance and sale of such bonds. The amount of bonds issued under Sections 69-2-19 through 69-2-39 shall not exceed One Hundred Fourteen Million Dollars ($114,000,000.00) in the aggregate; however:

(a) An additional amount of bonds may be issued under Sections 69-2-19 through 69-2-39 in an amount not to exceed Two Million Dollars ($2,000,000.00), and the proceeds of any such additional bonds shall be used solely for the purposes described in Section 69-2-13(14); and

(b) An additional amount of bonds may be issued under Sections 69-2-19 through 69-2-39 in an amount not to exceed Seventeen Million Dollars ($17,000,000.00), and the proceeds of such additional bonds shall be used solely for the purposes described in Section 69-2-13(16).

(2) No bonds may be issued under Sections 69-2-19 through 69-2-39 after October 1, 2023.

HISTORY: Laws, 1987, ch. 482, § 10; Laws, 1990, ch. 570, § 19; Laws, 1991, ch. 538, § 1; Laws, 1992, ch. 507, § 1; Laws, 1993, ch. 548, § 9; Laws, 1993 Ex Sess, ch. 1, § 1; Laws, 1995, ch. 548, § 11; Laws, 1996, ch. 553, § 6; Laws, 1998, ch. 536, § 10; Laws, 2000, ch. 584, § 5; Laws, 2001, ch. 540, § 2; Laws, 2002, ch. 541, § 8; Laws, 2003, ch. 504, § 2; Laws, 2004, 3rd Ex Sess, ch. 1, § 96; Laws, 2007, ch. 586, § 2; Laws, 2008, ch. 506, § 7; Laws, 2009, ch. 557, § 32; Laws, 2010, ch. 429, § 2; Laws, 2011, ch. 431, § 6, eff from and after passage (approved Mar. 16, 2011); Laws, 2020, ch. 337, § 2, eff from and after July 1, 2020.

Editor's Notes — Laws of 1990, ch. 570, § 20, effective July 1, 1990, provides as follows:

"SECTION 20. (1) Any attorney's fees paid as the result of the issuance of bonds under this act shall be in compliance with the limits on attorney's fees for bond issues as adopted by the State Bond Commission. Attorney's fees paid as the result of the issuance of bonds under this act shall be subject to negotiation but in no event shall exceed the limits established by the State Bond Commission. A detailed accounting of all expenses incurred by all persons, firms, corporations, associations or other organizations involved in such bond issues shall be submitted to the State Bond Commission within ninety (90) days after the issuance of such bonds and shall be a matter of public record.

"(2) No member of the Legislature, elected official or appointed official, or any partner or associate of any member of the Legislature, elected official or appointed official, shall derive any income from the issuance of any bonds or the disposition of any property under this act contrary to the provisions of Section 109, Mississippi Constitution of 1890, or Article 3, Chapter 4, Title 25, Mississippi Code of 1972.

"(3) In connection with the issuance and sale of bonds authorized under this act, the State Bond Commission shall select a bond attorney or attorneys who are listed in the 'Directory of Municipal Bond Dealers of the United States' and who are members in good standing of the Mississippi State Bar Association and licensed to practice law in the State of Mississippi; however, upon a finding by the commission spread on its official minutes that the public interest will best be served thereby, the commission may select any bond attorney or attorneys listed in the 'Directory of Municipal Bond Dealers of the

United States.' "

Laws of 2004, 3rd Ex Sess, ch. 1, § 228 provides:

"SECTION 228. Except as otherwise provided in this act, any entity using funds authorized and made available under Chapter 1, 2004 Third Extraordinary Session, is authorized, in its discretion, to set aside not more than twenty percent (20%) of such funds for expenditure with small business concerns owned and controlled by socially and economically disadvantaged individuals. The term "socially and economically disadvantaged individuals" shall have the meaning ascribed to such term under Section 8(d) of the Small Business Act (15 USCS, Section 637(d)) and relevant subcontracting regulations promulgated pursuant thereto; except that women shall be presumed to be socially and economically disadvantaged individuals for the purposes of this section."

Amendment Notes — The 2020 amendment, in the introductory paragraph of (1), substituted "One Hundred Fourteen Million Dollars ($114,000,000.00)" for "One Hundred Nine Million Dollars ($109,000,000.00)"; and in (2), substituted "October 1, 2023" for "October 1, 2019."

Cross References — State Bond Commission, see §§ 31-17-1, 31-17-3.

Department of Economic and Community Development, see § 57-1-1 et seq.

Use of bonds issued under sections 69-2-19 through 69-2-37 of this chapter to provide funds for Emerging Crops Fund, see § 69-2-13.

Interest and interest rates on general obligation bonds issued under sections 69-2-19 through 69-2-39 of this chapter, see § 69-2-25.

Authorization and procedures for borrowing funds for the Emerging Crops Fund in lieu of issuing bonds, see § 69-2-30.

Attorney General's representation of department with respect to bonds issued under §§ 69-2-19 through 69-2-39, see § 69-2-33.

Provision that bonds issued under this chapter shall be legal investments for banks and other entities, see § 69-2-35.

Authority for issuance of bonds under §§ 69-2-19 through 69-2-39, as well as exemption from limitations generally imposed on state obligations, see § 69-2-39.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture § 33.

CJS.
3 C.J.S., Agriculture §§ 24, 25.

§ 69-2-21. Full faith, credit, and taxing power of state pledged to payment of bonds.

For the payment of such bonds and the interest thereon, the full faith, credit, and taxing power of the State of Mississippi are hereby irrevocably pledged. If the Legislature finds that there are sufficient funds available in the General Fund of the State Treasury to pay maturing principal and accruing interest of the bonds, and if the Legislature appropriates such available funds for the purpose of paying such maturing principal and accruing interest, then the maturing principal and accruing interest of the bonds shall be paid from appropriations made by the Legislature from the General Fund of the State Treasury. However, if there are not sufficient funds available in the General Fund of the State Treasury to pay the maturing principal and accruing interest of the bonds, or if such funds are available but the Legislature fails to appropriate a sufficient amount thereof to pay such maturing principal and accruing interest as the same becomes due, then there shall be levied annually upon all taxable property in the State of Mississippi an ad valorem tax at the rate sufficient to provide the funds required to pay the bonds at maturity and the interest on the bonds as it accrues.

HISTORY: Laws, 1987, ch. 482, § 11, eff from and after passage (approved April 15, 1987).

Cross References — Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Application of this section to the borrowing of funds to fund the Emerging Crops Fund, see § 69-2-30.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

RESEARCH REFERENCES

Am. Jur.

3 Am. Jur. 2d, Agriculture § 22.

§ 69-2-23. Execution, delivery, conversion, redemption, and sale of general obligation bonds.

Such bonds may be executed and delivered by the state at any time and from time to time, may be in such form and denominations and of such terms and maturities, may be in fully registered form or in bearer form registrable either as to principal or interest, or both, may bear such conversion privileges and be payable in such installments and at such time or times not exceeding twenty (20) years from the date thereof, may be payable at such place or places, whether within or without the State of Mississippi, may bear interest payable at such time or times and at such place or places and evidenced in such manner, and may contain such provisions not inconsistent herewith, all as shall be provided in the proceedings of the State Bond Commission under which the bonds are authorized to be issued. Such bonds shall not bear a greater overall maximum interest rate to maturity than that authorized by law for general obligation bonds. If deemed advisable by the State Bond Commission, there may be retained in the proceedings under which any such bonds are authorized to be issued an option to redeem all or any part thereof as may be specified in such proceedings, at such price or prices and after such notice or notices and on such terms and conditions as may be set forth in such proceedings and briefly recited or referred to on the face of the bonds, but nothing herein contained shall be construed to confer on the state any right or option to redeem any bonds, except as may be provided in the proceedings under which they shall be issued. Any such bonds shall be sold on sealed bids at public sale, and for such price as the State Bond Commission determines to be in the best interest of the State of Mississippi, but no such sale shall be made at a price less than par value plus accrued interest to date of delivery of the bonds to the purchaser. The state may pay all expenses, premiums and commissions which the State Bond Commission may deem necessary or advantageous in connection with the issuance thereof, but solely from the proceeds of the bonds. The issuance by the state of one or more series of bonds shall not preclude it from issuing other series of bonds, but the proceedings under which any subsequent bonds may be issued shall recognize and protect any prior pledge made for any prior issuance of bonds.

HISTORY: Laws, 1987, ch. 482, § 12; Laws, 2009, ch. 557, § 33; Laws, 2011, ch. 431, § 7, eff from and after passage (approved Mar. 16, 2011).

Cross References — State Bond Commission, see §§ 31-17-1, 31-17-3.

Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations §§ 38 et seq.

CJS.

81A C.J.S., States §§ 434 et seq.

§ 69-2-25. Interest and interest rates on bonds.

No bond issued under Sections 69-2-19 through 69-2-39 of this chapter shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its stated maturity date at the interest rate specified on the bonds; and all bonds of the same maturity shall bear the same rate of interest from date to maturity. All interest accruing on bonds shall be payable semiannually or annually, except the first interest coupon attached to any bond may be for any period not exceeding one (1) year. If bonds are issued in coupon form, no interest payment shall be evidenced by more than one (1) coupon, and neither cancelled nor supplemental coupons shall be permitted. If serial bonds, such bonds shall mature annually, and the first maturity date thereof shall not be more than five (5) years from the date of such bonds.

HISTORY: Laws, 1987, ch. 482, § 13; Laws, 1993, ch. 472, § 3; Laws, 2009, ch. 557, § 34; Laws, 2011, ch. 431, § 8, eff from and after passage (approved Mar. 16, 2011).

Cross References — Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations §§ 384, 395, 396.

CJS.

81A C.J.S., States § 438.

§ 69-2-27. Notice of bond sales.

Notice of the sale of any such bonds shall be published at least one time which shall be made not less than ten (10) days prior to the date of sale, and shall be so published in one or more newspapers having a general circulation in the City of Jackson selected by the State Bond Commission.

HISTORY: Laws, 1987, ch. 482, § 14; Laws, 1997, ch. 394, § 3; Laws, 2009, ch. 557, § 35; Laws, 2011, ch. 431, § 9, eff from and after passage (approved Mar. 16, 2011).

Cross References — Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations § 201.

CJS.
81A C.J.S., States § 256.

§ 69-2-29. Execution procedures for bonds and coupons.

All bonds shall be executed on behalf of the state by the manual or facsimile signature of the chairman of the State Bond Commission and shall be countersigned by the manual or facsimile signature of the secretary of the State Bond Commission. All coupons shall be executed on behalf of the state by the facsimile signatures of the chairman and secretary of the State Bond Commission. If the officers whose signatures or countersignatures appear on the bonds or interest coupons shall cease to be such officers before delivery of the bonds, such signatures or countersignatures shall nevertheless be valid and sufficient for all purposes, the same as if they had remained in office until such delivery, or had been in office on the date such bonds may bear.

HISTORY: Laws, 1987, ch. 482, § 15, eff from and after passage (approved April 15, 1987).

Cross References — Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations § 185.

CJS.
81A C.J.S., States § 255.

§ 69-2-30. Borrowing funds for Emerging Crops Fund in lieu of issuing bonds.

(1) In lieu of the issuance of bonds pursuant to the authority granted in Section 69-2-19, Mississippi Code of 1972, the State Bond Commission is authorized and empowered, if more economically feasible, to borrow funds in an aggregate principal amount not to exceed the amount specified in Section 69-2-19, Mississippi Code of 1972. The Bond Commission, to evidence such loan, may issue and sell the negotiable coupon notes of the State of Mississippi, which notes may be issued in series, from time to time, as the proceeds thereof are needed. The notes shall be in such form and shall have such details as may be provided by the commission, except that the notes of each series shall be issued with final maturity not more than five (5) years from the date of such series. For the prompt payment of such notes at maturity, both principal and interest, the same pledges may be made as are authorized for the repayment of bonds in Section 69-2-21, Mississippi Code of 1972.

(2) The notes herein authorized shall be sold from time to time by the Bond Commission as the need for the proceeds thereof may arise, and the Bond Commission shall advertise and accept bids therefor and issue and sell such notes at a price which will result in the lowest interest rate on the best terms obtainable for the state.

(3) The Bond Commission in providing for the issuance of the notes herein authorized shall have discretion in fixing the terms and details thereof and may provide for the issuance of such notes in such form, executed in such manner, and payable at such place or places, and containing such terms, covenants and provisions as the Bond Commission may provide.

HISTORY: Laws, 1988, ch. 580, § 20, eff from and after passage (approved May 21, 1988).

Cross References — Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

§ 69-2-31. Transfer and disbursement of proceeds of sale of bonds and notes.

Upon the issuance and sale of bonds or notes, the State Bond Commission shall transfer the proceeds of any such sale or sales to the Emerging Crops Fund. The proceeds of such bonds or notes shall be disbursed solely upon the order of the department under such restrictions, if any, as may be contained in the resolution providing for the issuance of the bonds or notes.

HISTORY: Laws, 1987, ch. 482, § 16; Laws, 1988, ch. 580, § 21, eff from and after passage (approved May 21, 1988).

Cross References — Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

§ 69-2-33. Duties of Attorney General with respect to bonds and notes; costs of issuing bonds and notes.

Except as otherwise authorized in Section 7-5-39, the Attorney General of the State of Mississippi shall represent the department in issuing, selling and validating bonds or notes authorized under Sections 69-2-19 through 69-2-39 of this chapter, and the department is authorized to pay from the proceeds derived from the sale of such bonds or notes, or from other funds available to the department, the reasonable cost of approving attorney's fees, validating, printing and cost of delivery of such bonds or notes.

HISTORY: Laws, 1987, ch. 482, § 17; Laws, 1988, ch. 580, § 22; Laws, 2012, ch. 546, § 30, eff from and after July 1, 2012.

Cross References — Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

§ 69-2-35. Bonds and notes as legal investments for banks and other entities.

Bonds or notes issued under Sections 69-2-19 through 69-2-39 of this chapter shall be legal investments for commercial banks, trust companies, savings and loan associations, and insurance companies organized under the laws of this state.

HISTORY: Laws, 1987, ch. 482, § 18; Laws, 1988, ch. 580, § 23, eff from and after passage (approved May 21, 1988).

Cross References — Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

RESEARCH REFERENCES

Am. Jur.

10 Am. Jur. 2d, Banks §§ 515-518, 613-617.

CJS.

9 C.J.S., Banks and Banking § 164.

§ 69-2-37. Tax treatment of bonds and notes, and income therefrom.

All bonds or notes issued under Sections 69-2-19 through 69-2-39 of this chapter and the income therefrom shall be exempt from all taxation in the State of Mississippi except gift, transfer and inheritance taxes.

HISTORY: Laws, 1987, ch. 482, § 19; Laws, 1988, ch. 580, § 24, eff from and after passage (approved May 21, 1988).

Cross References — Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Federal Aspects— Federal tax treatment of interest on state bonds, see 26 USCS § 103.

§ 69-2-39. Empowering clause; exemption from limitations generally imposed on state obligations.

Sections 69-2-19 through 69-2-39 of this chapter, without reference to any statute not referred to herein, shall be deemed to be full and complete authority for the issuance of such bonds or notes, and shall be construed as an additional and alternative method therefor, and none of the present restrictions, requirements, conditions or limitations of law applicable to the issuance or sale of bonds, notes or other obligations by the state shall apply to the issuance and sale of bonds or notes under Sections 69-2-19 through 69-2-39 of this chapter, and no proceedings shall be required for the issuance of such bonds or notes other than those provided for and required herein, and all powers necessary to be exercised in order to carry out the provisions of Sections 69-2-13 through 69-2-37 of this chapter are hereby conferred.

HISTORY: Laws, 1987, ch. 482, § 20; Laws, 1988, ch. 580, § 25, eff from and after passage (approved May 21, 1988).

Cross References — Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

§ 69-2-40. Limits on attorney fees; government officials and associates not to derive income from issuance of bonds or disposition of property.

(1) Any attorney's fees paid as the result of the issuance of bonds under Sections 69-2-19 through 69-2-39 of this chapter shall be in compliance with the limits on attorney's fees for bond issues as adopted by the State Bond Commission. Attorney's fees paid as the result of the issuance of such bonds are subject to negotiation but in no event may they exceed the limits established by the State Bond Commission. A detailed accounting of all expenses incurred by all persons, firms, corporations, associations or other organizations involved in such bond issues shall be submitted to the State Bond Commission within ninety (90) days after the issuance of such bonds and shall be a matter of public record.

(2) No member of the Legislature, elected official or appointed official, or any partner or associate of any member of the Legislature, elected official or

appointed official, shall derive any income from the issuance of any bonds or the disposition of any property under Sections 69-2-19 through 69-2-39 of this chapter contrary to the provisions of Section 109, Mississippi Constitution of 1890, or Article 3, Chapter 4, Title 25, Mississippi Code of 1972.

HISTORY: Laws, 1993 Ex Sess, ch. 1, § 2, eff from and after passage (approved August 9, 1993).

§ 69-2-41. Savings clause.

If for any reason any section, paragraph, provision, clause or part of Sections 69-2-13 through 69-2-39 of this chapter shall be held unconstitutional or invalid, that section shall not affect or invalidate any other section, paragraph, provision, clause or part of this chapter not in and of itself invalid, but the remaining portions thereof shall be in force without regard to that so invalidated.

HISTORY: Laws, 1987, ch. 482, § 21, eff from and after passage (approved April 15, 1987).

VOLUNTARY FARM DEBT MEDIATION PROGRAM

Sec.
69-2-43 through 69-2-49. Repealed.
69-2-51. Prospective repeal of voluntary mediation provisions.

§§ 69-2-43 through 69-2-49. Repealed.

Repealed by Laws of 1990, ch. 496, § 5, eff from and after July 1, 1992.

§ 69-2-43 through § 69-2-49. [Laws, 1987, ch. 482, §§ 22-25; reenacted, Laws, 1988, ch. 425, §§ 1-4; reenacted, Laws, 1990, ch. 496, §§ 1-4, eff from and after July 1, 1990]

Editor's Notes — Former §§ 69-2-43 through 69-2-49 related to the creation and operation of the Voluntary Farm Debt Mediation Program.

§ 69-2-51. Prospective repeal of voluntary mediation provisions.

Sections 69-2-43 through 69-2-49 of this chapter, which create a Farm Mediation Office in the Department of Agriculture and Commerce and which provide for the mediation of certain agricultural debts, shall stand repealed from and after July 1, 1992.

HISTORY: Laws, 1987, ch. 482, § 26; reenacted and amended, Laws, 1988, ch. 425, § 5; amended, Laws, 1990, ch. 496, § 5, eff from and after July 1, 1990.

CHAPTER 3.

AGRICULTURAL SEEDS

Article 1. Sales. 69-3-1
Article 3. Seed Certification. 69-3-101

ARTICLE 1.

SALES.

Sec.
69-3-1. Definitions.
69-3-3. Seedsman permits.
69-3-4. Transfers of Bermuda grass; permit required; fee; misrepresentation and infringement of brand prohibited; penalties; rules and regulations.
69-3-5. Labeling requirements.
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§ 69-3-1. Definitions.

Wherever the following terms or similar terms are used in this article, they shall have the following meanings, unless the context clearly indicates otherwise:

(a) "Advertisement" means all representations made by the labeler, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this article.

(b) "Agricultural seeds" means the seed of grass, forage, cereal and fiber crops, lawn seed, and any other kinds of seed, including transgenic seeds, recognized within this state as agricultural or field seeds, and mixtures of such seeds.

(c) "Bulk" or "in bulk" means seed when loose either in vehicles of transportation, bins, cribs or tanks, and not seed in bags, boxes, cartons, bulk/super bags or other containers.

(d) "Certified seed," "registered seed" and "foundation seed" mean seed that has been produced and labeled in accordance with the procedures and in compliance with the rules and regulations of an official certifying agency authorized by the laws of this state or the laws of another state or country.

(e) "Commercial grower" means a person, firm or corporation engaged primarily in the production of seed for planting purposes for sale or trade.

(f) "Commissioner" means the Commissioner of Agriculture and Commerce of the State of Mississippi.

(g) "Commission merchant" or "agent" means a person, firm or corporation engaged in the selling of packet seed of less than four (4) ounces to consumers.

(h) "Consumer" means any person who purchases or otherwise obtains seed for sowing but not for resale.

(i) "Council" means the seed arbitration council created under Section 63-3-20.

(j) "Date of test" means the month and year the percentage of germination appearing on the label was obtained by laboratory test.

(k) "Department" means the Mississippi Department of Agriculture and Commerce.

(*l*) "Federal Seed Act" means the laws codified at 7 USCS 1551 et seq., and all regulations promulgated thereunder.

(m) "Firm ungerminated seed" means live seed, other than hard seed, which neither germinate nor decay during the period and under the conditions prescribed for germination of such seed by the rules and regulations promulgated pursuant to provisions of this article.

(n) "Flower seed" means the seeds of herbaceous plants grown for their blooms, ornamental foliage or other ornamental parts, including transgenic seeds, and commonly known and sold under the name of flower seeds in this state.

(o) "Hybrid" means the first generation seed of a cross produced by controlling the pollination and combining: (i) two (2) or more inbred lines; or (ii) one (1) inbred line or a single cross with an open-pollinated variety; or (iii) two (2) varieties or species, except open-pollinated varieties of corn. The second generation and subsequent generations of such crosses shall not be regarded as hybrids.

(p) "Kind" means one or more related species or subspecies which singly or collectively is known by one (1) common name; for example: soybeans, crimson clover, striate lespedeza, tall fescue.

(q) "Label" means the display or displays of written, printed or graphic matter upon or attached to the container of seed pertaining to the contents of the container.

(r) "Labeler" means the person, firm, corporation or the registered code number whose name appears on the label or container of seed.

(s) "Labeling" includes all labels and other written, printed or graphic representations made by the labeler accompanying and pertaining to the seed product whether in bulk or in containers, and any product use guides for the technology of the seed, that may be distributed in any manner including representations on invoices except for current official publications of the United States Department of Agriculture, state extension services, state experiment stations, state agricultural colleges and other similar federal or state institutions or agencies authorized by law to conduct research.

(t) "Lot of seed" means a definite quantity of seed identified by a lot number or other identification mark, every portion or bag of which is uniform for the factors which appear on the label, within permitted tolerances.

(u) "Mixed" or "mixture" means seeds consisting of more than one (1) kind, or kind and variety, or strain, each present in excess of five percent (5%) of the whole.

(v) "Official certifying agency" means an agency authorized or recognized and designated as a certifying agency by the laws of a state, the United States, a province of Canada, or the government of a foreign country.

(w) "Origin" means the state, District of Columbia, Puerto Rico, or possessions of the United States, or the foreign country where the seeds were grown.

(x) "Processing" means cleaning, scarifying, blending or treating to obtain uniform quality and other operations which would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed.

(y) "Product use guide" means any written information prepared by the labeler and distributed to the consumer, containing specific information concerning a seed product or a technology.

(z) "Prohibited noxious weed seed" means the seeds of weeds that reproduce by seed, and/or spread by underground roots or stems, and which, when established, are highly destructive and difficult to control in this state by ordinary good cultural practice, or constitute a peculiar hazard to the agriculture of this state.

(aa) "Pure seed," "germination," "other crop seed," "inert matter" and other seed labeling and testing terms in common usage not defined herein are defined as in the Federal Seed Act and the rules and regulations promulgated under that act.

(bb) "Recognized professional" means a person who is a licensed consultant, a certified crop advisor or any other person recognized by the arbitration council to be qualified to provide expert advise and opinion on seed performances.

(cc) "Restricted noxious weed seed" means the seeds of weeds that are particularly objectionable in fields, lawns or gardens of this state, but which can ordinarily be controlled by good cultural practice.

(dd) "Seed record" means information which relates to the origin, treatment, germination and purity of each lot of agricultural seed sold, offered or exposed for sale in this state, or which relates to the treatment, germination and variety of each lot of vegetable, flower, or tree and shrub seed sold, offered or exposed for sale in this state. Such information includes seed samples and records of declarations, labels, purchases, sales, cleaning, bulking, handling, storage, analyses, tests and examinations.

(ee) "Seedsman" means a person, firm or corporation engaged in the buying, selling or exchanging, offering or exposing for sale agricultural seeds or mixtures thereof, vegetable, flower, tree and shrub seeds as defined in this article.

(ff) "Stop sale order" means any written or printed notice or order given or issued by the commissioner or his authorized agents to the owner or custodian of any lot of agricultural, vegetable, flower, or tree and shrub seeds in this state, directing such owner or custodian not to sell, offer or expose such seeds for sale for planting purposes within this state until requirements of this article shall have been complied with and a written release has been issued.

(gg) "Strain" means the subdivision of a variety; for example: Clemson nonshattering soybeans, Strain 4.

(hh) "Treated" means that the seed has been given an application of a substance or subjected to a process designed to control or repel certain disease organisms, insects or other pests attacking such seeds or seedlings grown therefrom to improve its planting value or to serve any other purpose.

(ii) "Tree and shrub seeds" means the seeds of woody plants, including transgenic seeds, commonly known and sold as tree and shrub seeds in this state.

(jj) "Tolerance" means the allowance for sampling variation specified under rules and regulations promulgated pursuant to the provisions of this article.

(kk) "Transgenic seed" means seed from a plant whose genetic composition has been altered by methods other than those used in conventional plant breeding to produce seed that contains selected genes from other plants or species that will produce results such as herbicide tolerance, or resistance, insect tolerance, or resistance, or other traits derived from biotechnology.

(*ll*) "Variety" means a subdivision of a kind which is characterized by growth, plant, fruit, seed or other characteristics by which it can be differentiated in successive generations from other sorts of the same kind; for example: Lee soybeans, Frontier crimson clover, Kobe striate lespedeza, Kentucky 31 tall fescue.

(mm) "Vegetable seeds" means the seeds of those crops which are grown in gardens or on truck farms, including transgenic seeds, and are generally known and sold under the name of vegetable seeds in this state.

(nn) "Weed seed" means the seeds, bulblets or tubers of all plants generally recognized as weeds within the state and includes noxious weed seeds.

(oo) "Wholesale distributor" means a person, firm or corporation engaged in the selling of seed to a seedsman holding a permit as required by subsection (1)(c) of Section 69-3-3.

HISTORY: Codes, 1942, § 4397-01; Laws, 1964, ch. 204, § 1; Laws, 1968, ch. 249, § 1; Laws, 1989, ch. 489, § 1; reenacted and amended, Laws, 1991, ch. 541, § 1;

reenacted without change, Laws, 1996, ch. 314, § 1; Laws, 1998, ch. 473, § 1; Laws, 2000, ch. 623, § 1, eff from and after July 1, 2000.

Editor's Notes — Laws of 1991, ch. 541, § 3, amended Laws of 1989, ch. 489, § 3, so as to extend the repeal date of this section to July 1, 1996. Subsequently Laws of 1996, ch. 314, § 3, amended Laws of 1989, ch. 489, § 3, to remove the language providing for the repeal of the amendment by that act effective July 1, 1996.

Cross References — Terms defined for State Plant Board, see § 69-25-1.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 34 et seq.

CJS.
3 C.J.S., Agriculture §§ 1 et seq.

§ 69-3-3. Seedsman permits.

(1) Every seedsman who sells, offers for sale, exposes for sale, distributes or solicits orders for the sale of any agricultural seed or mixtures thereof, vegetable seed, flower seed, or tree and shrub seed as defined in Section 69-3-1 to farmers, retail seed dealers, wholesale distributors, or to others who use or plant such seed in the State of Mississippi, shall, before selling or offering such seed for sale or distributing or soliciting orders for the sale of such seed and on or before the first day of July of each year, secure an annual permit from the commissioner to engage in such business. Seed dealers and other sellers of seed shall apply for an annual permit upon forms prescribed by the commissioner and such a permit shall be issued upon the payment of the following permit fees when the application is in proper form:

(a) Each seedsman selling packet seed, in closed containers of less than four (4) ounces, through commission merchants or agents, shall furnish each agent with permit at fee of Two Dollars and Fifty Cents ($2.50) per agent. A separate permit shall be required for each location or place of business with rack display.

(b) For each seedsman engaged in selling vegetable seed at retail from containers of four (4) ounces or more, not displayed on a rack, a permit fee of Five Dollars ($5.00) for each such place of business. This permit will qualify the seedsman to only sell vegetable seeds, as identified by the Federal Seed Act, directly to the consumer.

(c) For each seedsman engaged in selling seed at retail to the consumer, except vegetable seed dealers as defined above and packet seed agents, a permit fee of Twenty-five Dollars ($25.00) for each such place of business. This permit will qualify the seedsman to only sell seed to the consumer for sowing but not for resale.

(d) For each seedsman engaged in selling seed to wholesale distributors only, a permit fee of Five Dollars ($5.00) for each such place of business of the seller. This permit will qualify the seedsman to sell only to "wholesale distributors."

(e) For each seedsman engaged in selling seed as a wholesale distributor, a permit fee of One Hundred Dollars ($100.00) for each such place of business. This permit qualifies a seedsman to sell at levels for permits required by paragraphs (a), (b), (c), (d) and (e) of this subsection.

(2) Out-of-state seedsmen who sell or ship seed into this state shall obtain a permit in the same manner as described in paragraphs (a), (b), (c), (d) and (e) of subsection (1).

(3) For the purpose of enforcement of the permit provisions of this section, the type of permit held by the buyer shall determine the type of permit required of the seller.

(4) Permits shall be renewed annually, beginning July 1, and may be revoked for cause by the commissioner. Failure to renew such permit by September 1 of each year will incur a penalty of twenty-five percent (25%) to the cost of the permit. The initial registration will be at the prescribed fee. However, the fee for first time permit applicants received on or after April 1 will be prorated by the commissioner for all classifications except packet agent permits.

(5) The Mississippi Agricultural and Forestry Experiment Station shall be exempt from permit requirements for seed distributed for increase.

HISTORY: Codes, 1942, § 4397-02; Laws, 1964, ch. 204, § 2; Laws, 1968, ch 249, § 2; Laws, 1997, ch. 611, § 1, eff from and after July 1, 1997.

Joing Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in the section by substituting "this subsection" for "this section" at the end of subsection (1)(e) and "subsection (1)" for "this section" at the end of subsection (2). The Joint Committee ratified the correction at its August 20, 2021, meeting.

Editor's Notes — Laws of 1997, ch. 611, was vetoed by the Governor on April 10, 1997. The veto was overridden at the 1st 1997 Extraordinary Session of the Legislature on April 23, 1997.

Cross References — Duty of commissioner to establish grades and standards of farm products, see § 69-1-19.

Advertising of seeds or plants as state certified, see § 69-3-109.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 50 et seq.

CJS.
3 C.J.S., Agriculture § 2.

§ 69-3-4. Transfers of Bermuda grass; permit required; fee; misrepresentation and infringement of brand prohibited; penalties; rules and regulations.

(1) Every person, firm, association or corporation that shall transfer ownership of Bermuda grass for commercial sprigging, or that shall issue, use or circulate any certificate, advertisement, tag, seal, poster, letterhead, marking circular, written or printed representation or description of or pertaining to Bermuda grass intended for commercial sprigging or sale shall conform to the standards or requirements as made by the Commissioner of Agriculture and Commerce. Such persons, firms, associations and corporations, before transferring ownership of Bermuda grass, on or before the first day of July of each

year, shall secure an annual permit from the Commissioner of Agriculture to engage in such business or practice. The annual permit fee shall not exceed Twenty-five Dollars ($25.00) for each person or place of business.

(2) If a person, firm, association or corporation discovers a new selection of Bermuda grass, such entity shall not name the grass in such a manner as to misrepresent, infringe or mimic a name already on the market. The commissioner may revoke the permit of any person who misrepresents, infringes or mimics a name in violation of this section.

(3) Any person who transfers ownership of Bermuda grass for commercial sprigging without a permit as required under this section shall be subject to a civil penalty, not to exceed Two Hundred Fifty Dollars ($250.00). All penalties levied by the commissioner shall be paid into the General Fund in the State Treasury.

(4) The Commissioner of Agriculture and Commerce shall promulgate rules and regulations to implement the provisions of this section.

HISTORY: Laws, 2002, ch. 596, § 2, eff from and after passage (approved Apr. 11, 2002).

§ 69-3-5. Labeling requirements.

(1) Each container of agricultural, vegetable, flower, or tree and shrub seeds sold, offered for sale, or exposed for sale, or transported within this state for seeding purposes shall bear thereon or have attached in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information:

(a) For agricultural seed:

(i) The commonly accepted name of kind and variety of each agricultural seed present in excess of five percent (5%) of the whole and the percentage by weight of each in the order of its predominance. When more than one (1) kind and variety is required to be named, the word “mixture” or the word “mixed” shall be shown conspicuously on the label, but the commissioner may by regulation permit certain kinds of seed to be labeled “mixed” without showing the percentage of each variety present. Hybrids shall be labeled with the name and/or number by which the hybrid is commonly designated.

(ii) Lot number or other designation.

(iii) Net weight.

(iv) Origin.

(v) Percentage by weight of all weed seed, including noxious weed seed.

(vi) Percentage by weight of inert matter.

(vii) Percentage by weight of other crop seed.

(viii) For each named agricultural seed:

1. Percentage of germination, exclusive of hard seed or firm seed.
2. Percentage of hard seed, if present.
3. Percentage of firm ungerminated seed, if present.

4. The calendar month and year the test was completed to determine such percentages.

(ix) The name and number per pound of each kind of restricted noxious weed seed.

(x) The name and address, or the registered code number, of the person who labeled the seed, or who sells, offers or exposes the seed for sale within this state.

(xi) In addition to the above label requirements, the commissioner may, by regulation, require certain additional information for the label.

(b) For vegetable seed in containers of more than one (1) pound:

(i) Name of kind and variety of seed.

(ii) Net weight.

(iii) Lot number or other identification.

(iv) Percentage of germination, exclusive of hard seed.

(v) Percentage of hard seed, if present.

(vi) Calendar month and year the test was completed to determine such percentages.

(vii) The name and address, or the registered code number, of the person who labeled the seed, or who sells, offers or exposes the seed for sale within this state.

(viii) For seeds which germinate less than standards prescribed under rules and regulations, the words "below standard" in not less than 8-point type must be written or printed on face of tag in addition to other information required.

(c) For vegetable seed in containers of one (1) pound or less:

(i) Name of kind and variety.

(ii) The name and address, or the registered code number, of the person who labeled the seed, or who sells, offers or exposes the seed for sale within this state.

(iii) For seed which germinate less than the standards prescribed for such seed under rules and regulations, the following additional information must be shown:

1. Percentage of germination, exclusive of hard seed.

2. Percentage of hard seed, if present.

3. Calendar month and year the test was completed to determine such percentage.

4. The words "below standard" in not less than 8-point type.

(d) For flower seed:

Flower seed shall be labeled to comply with rules and regulations promulgated under this article.

(e) For tree and shrub seed:

Tree and shrub seed shall be labeled to comply with the rules and regulations promulgated under this article.

(f) For treated seed:

All seed treated shall be labeled to comply with the rules and regulations promulgated under this article.

(2) The labeler shall keep records of the year of production and blending components of all agricultural or vegetable seed in each lot labeled, distributed or offered for sale within the state. Upon request the records of each lot of seed shall be made available to the purchaser of seed from such lots either through information on the label, the container or other means that may be required by regulation to provide the information requested in a timely manner.

HISTORY: Codes, 1942, § 4397-03; Laws, 1964, ch. 204, § 3; Laws, 2000, ch. 623, § 2, eff from and after July 1, 2000.

Cross References — Prerequisites to filing cause of action against seedsman for failure of seeds to perform as represented by seed label, see § 69-3-19.

Advertising of seeds or plants as state certified, see § 69-3-109.

JUDICIAL DECISIONS

1. In general.

Even if cotton seed sales arranged by a Mississippi agricultural cooperative were regarded as direct farmer-to-farmer transactions they nevertheless violated Plant Variety Protection Act § 111, 7 USCS § 2541, since the sales were not made in compliance with district labeling requirements of Mississippi laws governing the sale of seed (Code §§ 69-3-5, 69-3-9, 69-3-11). Delta & Pine Land Co. v. Peoples Gin Co., 546 F. Supp. 939, 1982 U.S. Dist. LEXIS 14627 (N.D. Miss. 1982).

RESEARCH REFERENCES

Am. Jur.

3 Am. Jur. 2d, Agriculture §§ 48 et seq.

12 Am. Jur. Pl & Pr Forms (Rev), Fraud and Deceit, Form 37.1 (complaint, petition, or declaration – misrepresentation as to germination of seed).

CJS.

3 C.J.S., Agriculture §§ 1 et seq.

§ 69-3-6. Seed inspection fees.

(1) The department may establish seed inspection fees, prescribe and furnish forms, and require the filing of reports necessary for the payment of the inspection fees. The department may inspect the record of any seedsman during the normal hours of business operation as it deems necessary.

(2) All fees collected under this section shall be deposited into a special fund in the State Treasury. The department may expend the monies in the fund by an annual appropriation approved by the Legislature for the support of the Seed Division of the Bureau of Plant Industry.

(3) Every seedsman who sells or distributes seed for sale, whether in bulk or in containers, within or into Mississippi for planting purposes, shall be assessed a seed inspection fee as required by the department.

(4) Every seedsman must:

(a) Pay an inspection fee on the total number of pounds of seed sold or otherwise distributed for sale within or into the state. Payment of the seed inspection fees shall be the responsibility of the seedsman initiating the first sale of seed within or into the state;

(b) Maintain records, as required by the department, that accurately reflect the total pounds of seed subject to the fees that are handled, sold or offered, or distributed for sale;

(c) File quarterly reports on forms provided or approved by the department, covering the total pounds of all sales of seed subject to the fee and sold during the preceding quarter. The reports and fees due shall be filed with the department no later than thirty (30) days following the end of each calendar quarter.

(5) A seedsman who does not file the quarterly report by the due date shall pay a penalty fee as provided by the regulations of the department. The penalty fee shall be waived if the seedsman obtains prior written approval from the department for a late filing and complies with the late filing requirements.

(6) If a seedsman does not comply with all the requirements of this section, the commissioner may suspend the seedsman's permit until the seedsman is in compliance.

HISTORY: Laws, 2005, ch. 453, § 1; Laws, 2009, ch. 319, § 1; Laws, 2013, ch. 407, § 1, eff from and after July 1, 2013.

§ 69-3-7. Records.

(1) Each person handling seed shall keep for a period of two (2) years a complete seed record of agricultural, vegetable, flower, or tree and shrub seeds handled.

(2) The records shall include the information for seed records as defined in Section 69-3-1.

(3) The commissioner or his duly authorized agents shall have the right to inspect such records for the purpose of the effective administration of this article.

HISTORY: Codes, 1942, § 4397-04; Laws, 1964, ch. 204, § 4; Laws, 2000, ch. 623, § 3, eff from and after July 1, 2000.

§ 69-3-9. Prohibitions.

(1) It shall be unlawful for any person to sell, offer for sale or expose for sale any agricultural seed, mixtures of agricultural seed, vegetable seed, flower seed, or tree and shrub seed, as defined in this article, for seeding purposes within this state:

(a) Unless a permit has been obtained in accordance with provisions of this article.

(b) Unless the test to determine the percentage of germination required by Section 69-3-5 shall have been completed within the period specified in the rules and regulations promulgated pursuant to the provisions of this article.

(c) Not labeled in accordance with the provisions of this article, or having a false or misleading labeling or claim.

(d) Pertaining to which there has been a false or misleading advertisement.

(e) Consisting of, or containing, prohibited noxious weed seeds.

(f) Containing restricted noxious weed seeds, except as prescribed by regulations promulgated under this article.

(g) Containing weed seeds, including those of noxious weeds, in excess of limits set forth in the rules and regulations promulgated pursuant to the provisions of this article.

(h) That have been treated with a poisonous material and not labeled in accordance with provisions of this article and regulations promulgated thereunder.

(i) To which there are affixed names or terms that create a misleading impression as to the kind, kind and variety, history, productivity, quality or origin of the seeds.

(j) Having tags or labels attached to the containers of seed bearing thereon a liability or nonwarranty clause disclaiming responsibility for the information on the label required by Section 69-3-5.

(k) Unless it conforms to the definition of a "seed lot" or "lot of seed" as defined in this article.

(2) It shall be unlawful for any person within this state:

(a) To detach, alter, deface or destroy any label provided for in this article or the regulations promulgated thereunder, or to alter or substitute seed in any manner that may defeat the purpose or provisions of this article.

(b) To disseminate false or misleading advertisements in any manner concerning agricultural, vegetable, flower, or tree and shrub seeds.

(c) To sell, distribute, offer for sale or expose for sale any agricultural, vegetable, flower, or tree and shrub seeds labeled "certified seed," "registered seed" or "foundation seed" unless it has been produced and labeled in accordance with the procedures and in compliance with the rules and regulations of an official certifying agency as defined in this article.

(d) To sell seed represented to be a hybrid unless such seed conforms to the definition of a hybrid as defined in this article.

(e) To hinder or obstruct in any manner the commissioner or an authorized agent of the commissioner in the performance of his duties.

(f) To fail to comply with a stop sale order or seizure order, or to dispose of any seed suspended from sale or use without proper release.

(g) To use the name of the department of agriculture, or the results of tests and inspections made by the department, for advertising purposes.

(h) To label and offer for sale seed under the scope of this article without keeping complete records as specified in Section 69-3-7.

(i) To use the words "type" or "trace" in lieu of information required by Section 69-3-5.

HISTORY: Codes, 1942, § 4397-05; Laws, 1964, ch. 204, § 5; Laws, 1968, ch. 249, § 3, eff from and after January 1, 1969.

JUDICIAL DECISIONS

1. In general.

Even if cotton seed sales arranged by a Mississippi agricultural cooperative were regarded as direct farmer-to-farmer transactions they nevertheless violated Plant Variety Protection Act § 111, 7 USCS § 2541, since the sales were not made in compliance with district labeling requirements of Mississippi laws governing the sale of seed (Code §§ 69-3-5, 69-3-9, 69-3-11). Delta & Pine Land Co. v. Peoples Gin Co., 546 F. Supp. 939, 1982 U.S. Dist. LEXIS 14627 (N.D. Miss. 1982).

§ 69-3-11. Exemptions.

Agricultural seed or mixtures of same, vegetable seed, flower seed, and tree and shrub seed shall be exempt from provisions of this article:

(1) When sold and delivered by a farmer-grower of this state on his own premises, but a farmer-grower is required to label seed when sold and shipped away from his premises, but is not required to hold the seedsman's permit. These provisions do not apply to commercial growers of seed.

(2) When sold or represented to be sold for purposes other than seeding, providing that the vendor shall make it unmistakably clear to the purchaser of such seed that it is not for seeding purposes.

(3) When seed for processing is being transported to, or consigned to, or stored in a processing or cleaning establishment, provided that the invoice or labeling accompanying said seed bears the statement "seed for processing." Other labeling or representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to this article.

(4) No label shall be required, unless requested by the purchaser, on agricultural seed, mixtures of same, vegetable seed, flower, and tree and shrub seed when such seeds are sold directly to and in the presence of the purchaser and taken from a container labeled in accordance with this article.

(5) No person shall be subjected to the penalties of this article for having sold, offered or exposed for sale in this state agricultural seed, mixtures of same, vegetable seed, flower seed, or tree and shrub seed which were incorrectly labeled or represented as to kind, variety or origin, which seed cannot be identified by examination thereof, unless he has failed to obtain an invoice or grower's declaration or other labeling information and to take such other precautions as may be reasonable to insure the identity to be that stated.

HISTORY: Codes, 1942, § 4397-06; Laws, 1964, ch. 204, § 6; Laws, 1968, ch. 249, § 4, eff from and after January 1, 1969.

JUDICIAL DECISIONS

1. In general.

Even if cotton seed sales arranged by a Mississippi agricultural cooperative were regarded as direct farmer-to-farmer transactions they nevertheless violated Plant Variety Protection Act § 111, 7 USCS § 2541, since the sales were not made in compliance with district labeling requirements of Mississippi laws governing the sale of seed (Code §§ 69-3-5, 69-

3-9, 69-3-11). Delta & Pine Land Co. v. Peoples Gin Co., 546 F. Supp. 939, 1982 U.S. Dist. LEXIS 14627 (N.D. Miss. 1982).

§ 69-3-13. Disclaimers, nonwarranties and limited warranties.

A disclaimer, nonwarranty or limited warranty used on labels or in advertisement shall not directly or indirectly deny or modify any information required by this article or the regulations promulgated thereunder.

HISTORY: Codes, 1942, § 4397-07; Laws, 1964, ch. 204, § 7, eff from and after January 1, 1965.

Cross References — Regulation of sale of acids, alkalis, and poisons, generally, see §§ 41-29-1 et seq.

Regulation of sale of economic poisons, see §§ 69-23-1 et seq.

§ 69-3-15. Withdrawal of seed.

(1) Seed not having a reasonable germination or which are extremely impure, notwithstanding the fact that they may be properly labeled, shall be withdrawn from sale and declared worthless when, in the opinion of the commissioner, such withdrawal is in the interest of normal crop production in this state.

(2) Worthless seed in violation of this article shall not be sold or given away for planting purposes.

HISTORY: Codes, 1942, § 4397-08; Laws, 1964, ch. 204, § 8, eff from and after January 1, 1965.

Cross References — Duties of commissioner, generally, see § 69-1-13.

§ 69-3-17. Enforcing agency; state preemption of conflicting local ordinances or regulations.

(1) The duty of enforcing this article is vested in the commissioner. The commissioner may establish rules and regulations not inconsistent with this article, may employ such agents and persons, and may make use of other employees of the department as deemed necessary for enforcement of this article.

(2) This article and the regulations of the department are of statewide concern and occupy the whole field of regulation regarding the cultivation, harvesting, production, processing, registration, labeling, sale, storage, transportation, quarantine, distribution, notification of use, planting, or other use of seeds to the exclusion of all local regulations. Except as otherwise specifically provided in this article, no ordinance or regulation of any political subdivision may prohibit or regulate any matter relating to the registration, labeling, sale, storage, transportation, quarantine, distribution, notification of use, planting and use of seeds.

HISTORY: Codes, 1942, § 4397-09; Laws, 1964, ch. 204, § 9; Laws, 2016, ch. 315, § 1, eff from and after passage (approved Apr. 4, 2016).

Cross References — Duties of commissioner, generally, see § 69-1-13.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 38 et seq.

CJS.
3 C.J.S., Agriculture §§ 2 et seq.

§ 69-3-19. Duties of enforcing agency.

(1) It shall be the duty of the Commissioner of Agriculture and Commerce, acting either directly or through his duly authorized agents:

(a) To sample, inspect, make analyses of and test agricultural, vegetable, flower, tree and shrub seeds, and transgenic seeds, transported, held in storage, sold, offered for sale or exposed for sale, or distributed within this state for seeding purposes, at such time and place, and to the extent as he may deem necessary to determine whether the seeds are in compliance with this article, and to notify promptly the person who transported, distributed, possessed, sold, offered or exposed the seed for sale, of any violation. Such test results shall be sufficient to be used by the Mississippi Department of Transportation to determine whether or not seed so tested meets the requirements of the Department of Transportation as set out in its contract specifications. No further testing shall be required unless the Department of Transportation determines that more than nine (9) months has elapsed, exclusive of the calendar month in which the test was completed, between the germination test data and the time of planting, or if by visual inspection the Department of Transportation determines that the seed was improperly stored or handled prior to planting.

(b) To prescribe and adopt reasonable rules and regulations governing the methods of sampling, inspecting, making analysis tests and examinations of agricultural, vegetable, flower and tree and shrub seeds, including standards, and the tolerances to be followed in the administration of this article, and any other reasonable rules and regulations as may be necessary to secure efficient enforcement of this article.

(c) To adopt and publish prohibited and restricted noxious weed seed lists.

(d) To publish list of kinds of seeds known and recognized to contain firm seeds.

(2) For the purpose of carrying out this article, the commissioner individually or through his designated agents is authorized:

(a) To enter upon any public or private premises where agricultural, vegetable, flower, or tree and shrub seeds are sold, offered or exposed for sale or distribution, during regular business hours in order to have access to seeds or records subject to this article and the rules and regulations, and to take samples of seed or copies of records in conformity therewith; and

(b) To establish, maintain and support a state seed testing laboratory with such facilities and personnel as may be deemed necessary. The laboratory shall be located at Mississippi State University of Agriculture and Applied Science. Such seed laboratory and equipment shall be in cooperation with Mississippi State University of Agriculture and Applied Science and under the supervision of the Director of the Bureau of Plant Industry, who shall be the state seed analyst; and

(c) To provide that any person, firm or corporation in this state shall have the privilege of submitting service seed samples for test to the state seed testing laboratory, subject to the charges as specified in the rules and regulations. Any person receiving a statement for seed analysis which is not paid in ninety (90) days will be in violation of this article. Any resident farmer may have one (1) sample of each kind tested free in any calendar year. A signed request by a farmer or individual must accompany the sample when it is sent in by a dealer; otherwise, the sample will be recorded and charges for analysis will be made to the dealer. Official seed samples drawn by inspectors in the enforcement of this article shall have first priority for testing in the state seed testing laboratory. The state seed analyst shall not be obligated to analyze uncleaned, unprocessed, and other time-consuming samples which obviously do not meet seed law requirements, except as time and facilities will permit; and

(d) To publish, in his discretion, the results of analyses, tests, examinations, field trials and investigations of any seed sampled under this article, together with any information he may deem advisable; and

(e) To issue and enforce a written or printed "stop sale" or "seizure" order to the owner or custodian of any lot of agricultural, vegetable, flower, or tree and shrub seeds which the commissioner or his authorized agent finds is in violation of this article or the rules and regulations, which shall prohibit further sale or movement of such seed until the officer has evidence that the law has been complied with and a written release has been issued to the owner or custodian of the seed; and

(f) To issue and enforce a "stop sale" or "seizure" order with respect to a particular variety of agricultural, vegetable, flower or tree and shrub seeds if the producer or distributor of such variety is found to have violated this article or the rules and regulations with respect to the particular variety, which shall remain in effect until the producer or distributor is in compliance with the law and has taken any action required by the commissioner to correct the effect of the violation in the marketplace; and

(g) To cooperate with the United States Department of Agriculture in seed law enforcement.

HISTORY: Codes, 1942, § 4397-10; Laws, 1964, ch. 204, § 10; Laws, 1968, ch. 249, § 5; Laws, 1981, ch. 413, § 1; Laws, 1989, ch. 489, § 2; reenacted and amended, Laws, 1991, ch. 541, § 2; reenacted and amended, Laws, 1996, ch. 314, § 2; reenacted and amended, Laws, 1997, ch. 611, § 2; Laws, 1998, ch. 473, § 2; Laws, 2000, ch. 623, § 4; reenacted and amended, Laws, 2002, ch. 596, § 1; Laws, 2005, ch. 449, § 1, eff from and after passage (approved Mar. 29, 2005).

Editor's Notes — Laws of 1991, ch. 541, § 3, amended Laws of 1989, ch. 489, § 3, so as to extend the repeal date of this section to July 1, 1996. Subsequently Laws of 1996, ch. 314, § 3, amended Laws of 1989, ch. 489, § 3, to remove the language providing for the repeal of the amendment by that act effective July 1, 1996.

Laws of 1997, ch. 611, was vetoed by the Governor on April 10, 1997. The veto was overridden at the 1st 1997 Extraordinary Session of the Legislature on April 23, 1997.

Cross References — Duties of commissioner, generally, see § 69-1-13.

§ 69-3-20. Appointment of arbitration council.

(1) The commissioner shall appoint an arbitration council composed of six (6) members to hear and decide each complaint. The Director of the Mississippi Agricultural and Forestry Experiment Station, the Director of the Mississippi Cooperative Extension Service, the President of the Mississippi Seedsmen's Association, the President of the Mississippi Farm Bureau Federation, and the Alcorn State University Divisional Director of Agriculture and Applied Sciences shall supply to the commissioner a list of four (4) candidates from their respective organizations. The commissioner shall choose one (1) candidate from each organization's list in selecting a council to hear each complaint. On or before January 1 of each year the respective recommending organizations shall submit member recommendations if they want to make changes from their previous recommendations. The commissioner, or his designee, shall be a member of and serve as chairman of the council and he may appoint a secretary for the council. It shall be the duty of the chairman to call the council into session to conduct all meetings and deliberations and to direct all other activities of the council. It shall be the duty of the secretary to keep accurate and correct records of all meetings and deliberations and perform such other duties for the council as directed by the chairman. The commissioner shall prescribe and adopt reasonable rules and regulations governing the arbitration process to include conditions and circumstances associated with seed to which arbitration is applicable.

(2) The purpose of the arbitration council is to assist consumers and seedsmen in determining the validity of complaints made by consumers against seedsmen and recommend cost damages resulting from failure of the seed to properly perform or produce, whether related to specific representations on the label or the labeling, other information on the seed container or conditions attributed to the quality of the seed.

(3)(a) When the department refers a complaint made by a consumer against a seedsman to the arbitration council, the council shall make a full and complete investigation of the matters complained of, and at the conclusion of the investigation, report its findings and make its recommendations of cost damages and file them with the department. Council findings and recommendations may be admissible as evidence in a court of law. When a complaint involving transgenic seeds is filed for arbitration, the seedsman shall furnish the commissioner the technology and procedures necessary to conduct any test to determine whether the seeds will perform as represented by the seedsman. The commissioner shall ensure that all technology and procedural information submitted to the department by the seedsman shall be kept confidential to ensure the proprietary rights of the seedsman. After a final disposition of all judicial proceedings or expiration of any applicable statute of limitation, the commissioner shall return all technology, records, test data or procedural information to the seedsman. In addition, remedies for misappropriation of a trade secret shall be governed by the Mississippi Uniform Trade Secrets Act in Sections 75-26-1 through 75-26-19.

(b) In conducting its investigation the arbitration council or any member or members shall be authorized to examine the consumer on his farming operation of which he complains; to examine the seedsman on his packaging, labeling and selling operation of the seed alleged to be faulty; to conduct an appropriate test of a representative sample of the alleged faulty seed through the facilities of the state and under the supervision of the department when such action is deemed to be necessary; and to hold informal hearings at a time and place designated by the chairman upon reasonable notice to the consumer and the seedsman.

(c) Any investigation made by less than the entire membership of the council shall be made by authority of a written directive by the chairman and the investigation shall be summarized in writing and considered by the council in its findings and in making its recommendations.

(d) If the council holds an informal hearing to allow each party an opportunity to present their side of the dispute, attorneys may be present at the hearings to confer with their clients. However, no attorney may participate directly in the proceedings.

(4) A majority of the six-member council shall constitute a quorum and action by a majority of a quorum shall be the official act of the council.

(5) The commissioner may issue subpoenas to require the attendance of witnesses and the production of documents. Any court of general jurisdiction in this state may enforce compliance with such subpoenas.

(6) The deliberations of the council at which the merits of a seed arbitration claim are under consideration shall not be subject to Section 25-41-1 et seq.

(7) The members of the council shall receive no compensation for the performance of their duties but shall be reimbursed for travel expenses in the manner and amount provided in Section 25-3-41, Mississippi Code of 1972.

(8) In lieu of a hearing by the council, informal hearings for arbitration may be conducted by an independent arbitrator appointed by the commissioner. The consumer filing a complaint or the seedsmen named in the complaint may request arbitration by an independent arbitrator. When a request is made, both parties shall be notified and consent to arbitration by an independent arbitrator. The commissioner shall appoint the arbitrator from a list of six (6) persons who shall be qualified to conduct arbitration proceedings. The commissioner shall publish the lists of qualified arbitrations every other year. The arbitrator appointed by the commissioner shall conduct all proceedings and hearings as provided in Section 69-3-20 and applicable rules and regulations and shall report the findings and recommendations to the commissioner.

HISTORY: Laws, 2000, ch. 623, § 5, eff from and after July 1, 2000.

§ 69-3-21. Seizures.

The commissioner may cause to be seized and held any lot of agricultural seed, mixtures of same, vegetable seed, flower seed, or tree and shrub seed found to be in violation of any of the provisions of this article until the law has been complied with and said violation otherwise legally disposed of. The inspectors of the state department of agriculture and commerce shall have power to enforce this section.

HISTORY: Codes, 1942, § 4397-11; Laws, 1964, ch. 204, § 11, eff from and after January 1, 1965.

§ 69-3-22. Procedure for complaint before council.

(1) As a prerequisite to filing a cause of action in court against a seedsman, a consumer who is damaged by the failure of agricultural, vegetable, flower or forest tree seed to properly produce or perform, as represented by the label or labeling whether related to specific representations on the label, other information on the seed container or conditions attributed to the quality of the seed, shall make a sworn complaint against such seedsman alleging damages sustained. The complaint shall be accompanied by documentation from a recognized professional verifying that there is a connection between the seed and the performance or production problem. The complaint shall be filed with the department and the department shall send a copy of the complaint to the seedsman by certified mail, within such time as to permit inspection of the crops, plants or trees by the seed arbitration council or its representatives and by the seedsman from whom the seed was purchased.

(2) Language setting forth the requirement for filing and serving the complaint shall be legibly typed or printed on the seed packages or the analysis label attached to the package containing such seed at the time of purchase by the consumer as follows:

"NOTICE: As a prerequisite to maintaining a legal action based upon the failure of seed to which this label is attached to properly produce or perform, as represented by the label or labeling, a consumer shall file a sworn complaint with the Commissioner of Agriculture and Commerce within such time as to permit inspection of the crops, plants or trees."

If language setting forth the requirement is not so placed on the seed package or analysis label, the filing and serving of a complaint under this section is not required.

(3) A filing fee of Two Hundred Fifty Dollars ($250.00) shall be paid to the department with each complaint filed. The fee shall be recovered from the dealer upon the recommendation of the arbitration council.

(4) Within fifteen (15) days after receipt of a copy of the complaint, the seedsman shall file with the department his answer to the complaint and serve a copy of the answer on the consumer by certified mail.

(5) The department shall refer the complaint and the answer to the council for investigation, findings and recommendations on the matters set out in the complaint. Upon receipt of the findings and recommendations of the council, the department shall transmit them to the consumer by certified mail.

(6) The consumer and seedsman shall give written notice to the department of the acceptance or rejection of the council's recommended terms of settlement within thirty (30) calendar days from the date the recommended terms of settlement are issued by the arbitration council.

HISTORY: Laws, 2000, ch. 623, § 6, eff from and after July 1, 2000.

§ 69-3-23. Repealed.

Repealed by Laws of 1997, ch. 611, § 3, eff from and after July 1, 1997.

§ 69-3-23. [Codes, 1892, § 1013; 1906, § 1090; Hemingway's 1917, § 816; 1930, § 839; 1942, § 2065; Laws, 1882, p. 141]

Editor's Notes — Former § 69-3-23 required traders in seed cotton to keep a register of the names of all persons from whom they buy or procure by barter cotton.

Laws of 1997, ch. 611, was vetoed by the Governor on April 10, 1997. The veto was overridden at the 1st 1997 Extraordinary Session of the Legislature on April 23, 1997.

§ 69-3-25. Penalties.

Any person who violates any provision of this article or the rules and regulations made and promulgated thereunder shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall pay a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

HISTORY: Codes, 1942, § 4397-12; Laws, 1964, ch. 204, § 12; Laws, 2000, ch. 623, § 7; Laws, 2005, ch. 453, § 3; Laws, 2013, ch. 407, § 2, eff from and after July 1, 2013.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 69-3-27. Disposition of fees.

All fees collected by the Commissioner under this article, except those fees collected under Section 69-3-6, shall be paid to the State Treasurer who shall deposit the fees in the General Fund in the State Treasury.

HISTORY: Codes, 1942, § 4397-13; Laws, 1964, ch. 204, § 13; Laws, 1968, ch. 249, § 6; Laws, 1970, ch. 255, § 1; Laws, 2005, ch. 453, § 2, eff from and after passage (approved Mar. 29, 2005).

§ 69-3-29. Administrative procedures; applicability.

(1) Whenever it has been alleged that any person or other entity has violated any of the provisions of this article, or any of the rules or regulations

promulgated hereunder, the matter shall be conducted as an administrative proceeding under the terms and conditions of Sections 69-25-51 through 69-25-63, and where found culpable, such person or other entity shall be subject to the administrative and civil penalties provided therein.

(2) The procedures described herein shall not apply to seed arbitration claims which are described in Sections 69-3-20 through 69-3-22, as such claims shall be governed by the procedures set forth in those statutes.

HISTORY: Laws, 2000, ch. 623, § 8; Laws, 2013, ch. 407, § 3, eff from and after July 1, 2013.

ARTICLE 3.

SEED CERTIFICATION.

Sec.
69-3-101. Designation of state seed certifying agency.
69-3-103. Designation of state seed board.
69-3-105. State seed board; financial responsibility.
69-3-107. Certification to be self-supporting.
69-3-109. Advertising; tags.
69-3-111. Prohibiting the state seed certifying agency from selling or processing certified seed.
69-3-113. Rules and regulations.
69-3-115. Appeals.
69-3-117. Approval required for issuance, use, or circulation of certification.
69-3-119. Enforcement of this article.
69-3-121. Penalties.

§ 69-3-101. Designation of state seed certifying agency.

The Commissioner of Agriculture and Commerce, the president of Mississippi State University of Agriculture and Applied Science, and the director of the agricultural and forestry experimental station of Mississippi State University of Agriculture and Applied Science are hereby vested with the full authority to designate a seed improvement association as the official state seed certifying agency for the State of Mississippi. Said officials are hereby further authorized, if they shall be satisfied at any time that the association acting as the official state seed certifying agency is not functioning in a manner conducive to the best interest of agriculture in this state, to terminate the appointment of such association, and to designate another seed improvement association as the official state seed certifying agency.

HISTORY: Codes, 1942, § 4398-01; Laws, 1952, ch. 170, § 1.

Cross References — Agricultural seeds, generally, see §§ 69-3-1 et seq.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture § 50.

CJS.
3 C.J.S., Agriculture § 2.

§ 69-3-103. Designation of state seed board.

There is hereby created a state seed board composed of the president of Mississippi State University of Agriculture and Applied Science, the director of the agricultural and forestry experiment station of Mississippi State University of Agriculture and Applied Science, the commissioner of agriculture and commerce of Mississippi, two (2) members to be selected and approved by and from the membership of the state certifying agency, one (1) member to be selected and approved by and from the membership of the Mississippi Seedmen's Association, and one (1) member to be selected and approved by and from the resident concerns and individuals engaged in the production of breeders registered planting seed in the State of Mississippi.

HISTORY: Codes, 1942, § 4398-02; Laws, 1952, ch. 170, § 2.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture § 50.

CJS.
3 C.J.S., Agriculture § 2.

§ 69-3-105. State seed board; financial responsibility.

Neither the state seed board, Mississippi State University of Agriculture and Applied Science, nor any of its divisions so represented shall be financially responsible for debts incurred by, damages inflicted by, or contracts broken by the official state seed certifying agency.

HISTORY: Codes, 1942, § 4398-03; Laws, 1952, ch. 170, § 3.

§ 69-3-107. Certification to be self-supporting.

The work of the official state seed certifying agency shall be on a self-supporting basis.

HISTORY: Codes, 1942, § 4398-04; Laws, 1952, ch. 170, § 3.

§ 69-3-109. Advertising; tags.

Every person, firm, association or corporation who shall issue, use or circulate any certificate, advertisement, tag, seal, poster, letterhead, marking circular, written or printed representation, or description of or pertaining to seeds, plants or plant parts or other farm products that may be defined by regulations intended for propagation or sale or sold or offered for sale wherein the words "Mississippi Certified," or Mississippi State Certified, State Certified, or similar words or phrases are used or employed, or wherein are used or employed signs, symbols, maps, diagrams, pictures, words or phrases expressly or impliedly stating or representing that such seeds, plants or plant parts or other farm products comply with or conform to the certification standards or requirements as made by the approved state seed certifying agency of Mississippi, shall be subject to the provisions of this article, provided that this article shall not apply to the certification of plants or plant products for freedom from disease or insects which is now conducted under the authority of the Commissioner of Agriculture and Commerce. Every issuance, use, or circulation of any certificate or any other instrument as in this section above described shall be deemed to be "certification" as this term is employed in this article.

HISTORY: Codes, 1942, § 4398-05; Laws, 1952, ch. 170, § 5; Laws, 2002, ch. 398, § 1, eff from and after July 1, 2002.

Cross References — Labeling requirements for agricultural seeds, see § 69-3-5.

§ 69-3-111. Prohibiting the state seed certifying agency from selling or processing certified seed.

The state seed certifying agency shall not have the power to engage in the sale or processing of seeds, plants or plant parts or other farm products or to designate any agency or individual for these purposes except that the state seed certifying agency may promote the sale of certified seeds in general through advertising.

HISTORY: Codes, 1942, § 4398-06; Laws, 1952, ch. 170, § 6; Laws, 2002, ch. 398, § 2, eff from and after July 1, 2002.

§ 69-3-113. Rules and regulations.

The duly approved state seed certifying agency is hereby vested with the full authority to establish, create and specify rules and regulations for the designation of seeds, plants and plant parts and other farm products as certified or Mississippi certified to be grown, harvested, offered for sale or distributed. Such rules and regulations shall be approved by the state seed board before becoming effective. No seeds, plants or plant parts or other farm products grown or to be grown in Mississippi shall be eligible for certification hereunder except by full compliance as to standards, requirements and forms of or for certification as may be made by the duly approved state seed certifying agency. No certification within the provisions of this article shall be made or authorized except through the approved state certifying agency as herein provided.

HISTORY: Codes, 1942, § 4398-07; Laws, 1952, ch. 170, § 7; Laws, 2002, ch. 398, § 3, eff from and after July 1, 2002.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture § 50.

CJS.
3 C.J.S., Agriculture § 2.

§ 69-3-115. Appeals.

Any person desiring a change in the rules and regulations or to appeal from the action of the state seed certifying agency shall have the right of a hearing either in person or by attorney before a board of appeals composed of the state commissioner of agriculture and commerce, the director of the agricultural and forestry experiment station of Mississippi State University of Agriculture and Applied Science, and the president of Mississippi State University of Agriculture and Applied Science, at such time and place as the board chairman shall designate. The director of the agricultural and forestry experiment station of Mississippi State University of Agriculture and Applied Science shall serve as chairman of the board. The aggrieved party may appeal to the circuit court of the county wherein he may reside and bond shall be given to cover court costs within ten days after rendition of the order of the said board, upon which appeal is made.

HISTORY: Codes, 1942, § 4398-08; Laws, 1952, ch. 170, § 8.

§ 69-3-117. Approval required for issuance, use, or circulation of certification.

It shall be unlawful for any person, firm, association or corporation to issue, make, use, or circulate any certification as defined in this article without the authority or approval of the approved state seed certifying agency.

HISTORY: Codes, 1942, § 4398-09; Laws, 1952, ch. 170, § 9.

§ 69-3-119. Enforcement of this article.

The Commissioner of Agriculture and Commerce of Mississippi is hereby vested with the responsibility for enforcing the provisions of this article.

HISTORY: Codes, 1942, § 4398-09; Laws, 1952, ch. 170, § 9.

§ 69-3-121. Penalties.

(1) Except as otherwise provided in subsection (2) of this section, every person, firm, association or corporation who shall violate any of the provisions of this article pertaining to certification shall be guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not less than $25.00, nor exceeding $500.00, for each offense, and be denied the right to apply for further certification within such period as the court may determine, not exceeding 1 year.

(2) Any person who, with the intent to injure, defraud or mislead, shall alter, erase, raise, obliterate, destroy, forge, substitute, disfigure in any manner, or remove from the package, container, wrappings or bale to which it is attached, any certificate, specification, or certification of any seed improvement association organized under the laws of this state, disclosing or in any

manner pertaining to the grade, quality, quantity, or condition of any agricultural field seed or seeds or any cotton or cotton lint, shall be guilty of a misdemeanor, and on conviction shall be fined not less than Twenty-five Dollars ($25.00), nor more than Five Hundred Dollars ($500.00), or imprisoned in the county jail for not more than twelve months, or both.

HISTORY: Codes, 1942, §§ 4397-31, 4398-09; Laws, 1946, ch. 461, § 1; Laws, 1952, ch. 170, § 9.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 5.

FAIRS; STOCK SHOWS; IMPROVEMENT OF LIVESTOCK

Article 1.	Mississippi State Fairgrounds.	69-5-1
Article 3.	Stock Shows and Improvement of Livestock.	69-5-101

ARTICLE 1.

MISSISSIPPI STATE FAIRGROUNDS.

Sec.	
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69-5-33.	Repealed.

§ 69-5-1. Mississippi Fair Commission abolished and powers, duties, obligations transferred to Department of Agriculture and Commerce; Mississippi Fair Advisory Council created; composition.

(1) The Mississippi Fair Commission is hereby abolished, and all of the powers, duties, property, contractual rights and obligations and unexpended funds of that commission shall be transferred to the Department of Agriculture and Commerce on July 1, 2020. Wherever the term "Mississippi Fair Commission" appears in any law or regulation, the same shall mean the Department of Agriculture and Commerce. The transfer of personnel shall be commensu-

rate with the number and classification of positions allocated to the commission.

(2) In order to promote agricultural and industrial development in Mississippi and to encourage the farmers to grow better livestock and agricultural products, there is hereby created an advisory council to be hereafter known as the Mississippi Fair Advisory Council. The department shall receive input and guidance from the advisory council, which shall be composed of the following: The Commissioner of Agriculture and Commerce, chairman, the Director of the Mississippi State University Extension Service, President of the Mississippi Livestock Association, the Director of Mississippi Vocational Education, the Director of the Mississippi Development Authority, the Mayor of the City of Jackson, Mississippi, the Dean and Director of Alcorn State University School of Agriculture and Applied Sciences,and an appointee of the Governor, all to serve without salary compensation.

HISTORY: Codes, 1942, § 4435-50; Laws, 1946, ch. 295, §§ 1-6; Laws, 1958, ch. 140, § 1; Laws, 2020, ch. 417, § 4, eff from and after July 1, 2020; reenacted and amended, Laws, 2021, ch. 362, § 1, eff from and after July 1, 2021.

Amendment Notes — The 2020 amendment added (1); rewrote the former section, which read: "In order to promote agricultural and industrial development in Mississippi and to encourage the farmers to grow better livestock and agricultural products, there is hereby created a body politic and corporate to be hereafter known as the "Mississippi Fair Commission," which said body politic and corporate shall be under the management and control of said commission to be named by the Governor as follows: The Commissioner of Agriculture and Commerce, chairman, the director of the Mississippi Extension Service, president of the Mississippi Livestock Association, the director of Mississippi Vocational Education, and a representative of Mississippi Association of Fairs, a representative of the Agricultural and Industrial Board, and a representative of the City Commission of Jackson, Mississippi, all to serve four years without salary compensation. Should a vacancy occur by resignation or death, the Governor shall appoint a successor" and designated it (2).

The 2021 amendment reenacted and amended the section by inserting "the Dean and Director of Alcorn State University School of Agriculture and Applied Sciences" in the last sentence of (2).

Cross References — Livestock shows, generally, see §§ 69-5-101 et seq.

§ 69-5-3. Powers and duties of Mississippi Fair Commission.

(1) The Department of Agriculture and Commerce shall set up rules and regulations consistent with the law governing the distribution of state monies for premiums or awards. It will be the duty of the department, at least twice each year, to approve premium lists or awards, and give out rules governing participants in state premium money in Mississippi. The department may invite the presidents of the various district livestock shows before the department when determining policies affecting district livestock shows.

(2) The Department of Agriculture and Commerce is hereby authorized to accept money or funds donated to the department, including funds to be awarded as prizes in livestock competition.

(3) The Department of Agriculture and Commerce shall have charge of the State Fairgrounds located in Jackson, Mississippi, including all buildings

and improvements thereon, and shall have full power and authority in perfecting plans and causing to be held thereon the Mississippi State Fair and other such events that may be authorized by the department.

(4) The Department of Agriculture and Commerce is hereby authorized to employ an attorney as prescribed in Section 69-1-14.

(5) The Department of Agriculture and Commerce may take any action authorized in Section 1 of Chapter 306, Laws of 2000.

(6) The Department of Agriculture and Commerce may allow a commercial, charitable or governmental entity to use, publish and advertise such entity's name in connection with any of the buildings, improvements, grounds or objects located on the State Fairgrounds in Jackson, except for the Kirk Fordice Equine Center, or in connection with any of the events conducted on the State Fairgrounds in return for a monetary consideration paid to the department. Furthermore, the department may lease to any public, private, commercial or charitable entity for a term not to exceed twenty (20) years naming rights to buildings, except for the Kirk Fordice Equine Center, or property, including, but not limited to, new construction, improvements to existing buildings, grounds and/or objects located on the State Fairgrounds in return for consideration benefitting the commission. The lessee shall pay the cost of erecting, maintaining and removing signage related to the property. Those funds received from an entity for allowing its name to be used, published or advertised in connection with the buildings, improvements, objects or events shall be retained by the department to be used for capital improvements to the fairgrounds or in its annual operating budget. The department shall not enter into any such agreement with any vendor whose products are illegal for participation in or use by persons eighteen (18) years of age and under.

(7) The Commissioner of Agriculture and Commerce is authorized to form and establish a private foundation or nonprofit corporation to receive and disburse the funds generated by the sale of naming rights described in subsection (6) of this section and for any other donations made to the department. The funds shall be disbursed in accordance with guidelines described in this section, and the foundation or nonprofit corporation shall be subject to the reporting requirements described in subsection (10) of this section. All funds shall remain with the foundation until disbursement and shall not be transferred to the State General Fund. No public funds shall be deposited into the account of the private foundation or nonprofit corporation established by the department for the benefit of the State Fairgrounds, nor shall the Legislature appropriate any State General Fund or Special Fund monies to the foundation or nonprofit corporation for such purposes. All monies received by the foundation shall be maintained separately from funds allocated to the department for operating and administrative costs associated with the State Fairgrounds. In addition to the reporting of information to be included in the annual legislative report of the department, the private foundation or nonprofit corporation shall be subject to annual financial audits by the State Auditor and by auditors of donors in the same manner as required for state agencies.

(8) The Department of Agriculture and Commerce shall have the authority to enter into a lease or right-of-way with a third party covering any land or buildings on the State Fairgrounds and any funds generated from such lease or right-of-way shall remain in a special fund managed by the department for the benefit of the State Fairgrounds. All monies in the special fund may be used for capital improvements to the State Fairgrounds or in the department's annual operating budget for operating and administrative costs associated with the State Fairgrounds. Any unexpended funds remaining in the special fund shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited in the fund.

(9) The Department of Agriculture and Commerce is hereby authorized, with the advice of the Mississippi Fair Advisory Council, to adopt such rules and regulations as may be necessary or desirable to carry out, execute or implement the provisions of this article.

(10) The Department of Agriculture and Commerce shall report by January 1 of each year a detailed financial statement of all monies received and expended under subsection (6) and subsection (7) of this section to the Lieutenant Governor, the Speaker of the House of Representatives and the Chairman of the Senate Agriculture Committee and the Chairman of the House of Representatives Agriculture Committee.

HISTORY: Codes, 1942, § 4435-50; Laws, 1946, ch. 295, §§ 1-6; Laws, 1958, ch. 140, § 1; Laws, 1983, ch. 365, § 3; Laws, 2000, ch. 306, § 2; Laws, 2001, ch. 579, § 1; Laws, 2012, ch. 360, § 1; Laws, 2014, ch. 373, § 1; Laws, 2017, ch. 364, § 2, eff from and after passage (approved Mar. 20, 2017); Laws, 2020, ch. 417, § 5, eff from and after July 1, 2020; reenacted without change, Laws, 2021, ch. 362, § 2, eff from and after July 1, 2021.

Editor's Notes — Laws of 2001, ch. 579, § 2, provides:

"SECTION 2. The contract for the naming rights of any coliseum entered into before the effective date of this act [July 1, 2001], including, but not limited to, the contract for naming rights of a coliseum in a municipality with a population of thirty thousand (30,000) or more in a county where Highways 78 and 45 intersect, is hereby ratified and affirmed."

Laws of 2018, ch. 405, § 1, effective March 19, 2018, provides:

"SECTION 1. (1) The Mississippi Department of Finance and Administration, acting on behalf of the Mississippi Fair Commission, is authorized to acquire certain real properties and the improvements thereon in the method as determined in the best interest of the State of Mississippi, located in the corporate limits of the City of Jackson, Hinds County, Mississippi, for the use and benefit of the Mississippi Fair Commission,

[For complete property description, see Section 1 of Chapter 405, Laws of 2018.]

"(2) The real properties and improvements described in subsection (1) of this section shall not be purchased for an amount greater than the current fair market value as determined by the average of two (2) appraisals by qualified appraisers, one (1) of whom shall be selected by the Department of Finance and Administration, and both of whom shall be certified and licensed by the Mississippi Real Estate Appraiser Licensing and Certification Board.

"(3) The Department of Finance and Administration may correct any discrepancies in the legal descriptions of the properties provided in this section.

"(4) In acquiring ownership of the properties described in subsection (1) of this section, the state shall acquire all interest in the mineral rights in the properties, which shall be retained by the state in any subsequent agreement to sell or lease the properties once acquired under the provisions of this act."

Amendment Notes — The 2020 amendment substituted "Department of Agriculture and Commerce" for "Mississippi Fair Commission" everywhere it appears in (2) through (6) and (9) and (10); substituted "department" for "commission" everywhere it appears in (2) through (7); in (1), substituted "department" for "commission to meet at the call of the chairman" in the second sentence; in (7), substituted "Commissioner of Agriculture and Commerce" for "chairman of the commission"; in (8), substituted "Department of Agriculture and Commerce" for "commission" the first time it appears and "department for the benefit of the State Fairgrounds" the second time it appears, substituted "department's" for "commission's," and added "for operating and administrative costs associated with the State Fairgrounds"; and in (9), inserted "with the advice of the Mississippi Fair Advisory Council."

The 2021 amendment reenacted the section without change.

Cross References — Provisions relative to charges for admission to the State Fair and use of proceeds, see § 69-5-11.

Livestock shows, generally, see §§ 69-5-101 et seq.

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Commission has authority to lease facilities under control of Commission to private parties as long as activities conducted therein are open to public and in public interest; this same rule applies to equipment under control of Commission; Commission has authority to establish priority in usage of such equipment to civic groups and other public interest usage over general commercial usage. Orr, March 14, 1990, A.G. Op. #90-0165.

Miss. Code Section 69-5-3 grants Fair Commission authority to charge admission to state fair, and directs that all admission funds shall be utilized for improvements on state fairgrounds; from this broad grant of authority, and in absence of legislation to contrary, Fair Commission has authority to enter into exclusive soft drink beverage contract for state properties under its control, so long as funds so generated are utilized for improvements on fairgrounds. Ross, Jan. 3, 1993, A.G. Op. #92-1016.

A city council has no authority to ban gun shows on the Mississippi State Fairgrounds. White, June 2, 2006, A.G. Op. 06-0220.

§ 69-5-5. Appointment of director to oversee operations of State Fairgrounds complex.

The Commissioner of Agriculture and Commerce shall appoint, subject to the advice and consent of the Senate, a director within the department who shall oversee all operations at the State Fairgrounds Complex and its adjoining properties and who shall give full and detailed reports of livestock shows and fairs participating in premium monies, for report to the Governor and Legislature. The compensation of the director shall be fixed by the Commissioner of Agriculture and Commerce, subject to approval by the State Personnel Board, and shall be exempt from the provisions of subsection (2) of Section 25-3-39.

HISTORY: Codes, 1942, § 4435-50; Laws, 1946, ch. 295, §§ 1-6; Laws, 1958, ch. 140, § 1; Laws, 2020, ch. 417, § 6, eff from and after July 1, 2020.

Editor's Notes — Section 69-5-33, which was the repealer for this section and §§ 69-5-1, 69-5-3, 69-5-7, 69-5-8, 69-5-11, 69-5-13, 69-5-15, 69-5-27, 69-5-29 and 69-5-31, was repealed by Laws of 2021, ch. 362, §11, effective July 1, 2021.

Amendment Notes — The 2020 amendment rewrote the section, which read: "The Mississippi Fair Commission may name an executive secretary and assign duties, who shall be required to keep full and complete minutes of the commission's action and give full and detailed reports of livestock shows and fairs participating in premium monies, for report to the Governor and Legislature."

Cross References — Powers and duties of State Fair Commission, see § 69-5-3.

Livestock shows, generally, see §§ 69-5-101 et seq.

§ 69-5-7. Headquarters of Mississippi State Fair operations.

Headquarters of the Mississippi State Fair operations shall be in connection with the office of the Department of Agriculture and Commerce.

HISTORY: Codes, 1942, § 4435-50; Laws, 1946, ch. 295, §§ 1-6; Laws, 1958, ch. 140, § 1; Laws, 2020, ch. 417, § 7, eff from and after July 1, 2020; reenacted without change, Laws, 2021, ch. 362, § 3, eff from and after July 1, 2021.

Amendment Notes — The 2020 amendment substituted "Mississippi State Fair operations" for "Mississippi Fair Commission"; deleted "state" following "office of the"; and made minor stylistic changes.

The 2021 amendment reenacted the section without change.

§ 69-5-8. "Kirk Fordice Equine Center" designated.

The building under the jurisdiction of the Department of Agriculture and Commerce, that is located in Jackson, Mississippi, and used primarily as an arena for rodeo and livestock expositions and related events, shall be named the Kirk Fordice Equine Center. The Department of Agriculture and Commerce shall prepare or have prepared a distinctive plaque, to be placed in a prominent place within the Kirk Fordice Equine Center, that states the background, accomplishments and service to the state of Governor Kirk Fordice.

HISTORY: Laws, 2005, ch. 301, § 1, eff from and after passage (approved Feb. 10, 2005); Laws, 2020, ch. 417, § 8, eff from and after July 1, 2020; reenacted without change, Laws, 2021, ch. 362, § 4, eff from and after July 1, 2021.

Amendment Notes — The 2020 amendment substituted "Department of Agriculture and Commerce" for "Mississippi Fair Commission" twice.

The 2021 amendment reenacted the section without change.

§ 69-5-9. Effect of Sections 69-5-1 through 69-5-9 on livestock shows.

Nothing in Sections 69-5-1 through 69-5-9 shall be construed to mean a change in the location or limit the number of district or divert any appropriation made by the Legislature to the various livestock shows in Mississippi now set up and designated by law.

HISTORY: Codes, 1942, § 4435-50; Laws, 1946, ch. 295, §§ 1-6; Laws, 1958, ch. 140, § 1.

Cross References — Livestock shows, generally, see §§ 69-5-101 et seq.

§ 69-5-11. Admission charges to State Fair.

(1) The Department of Agriculture and Commerce shall charge for admission to the State Fair. The proceeds thereof shall be used for the repayment of revenue bonds issued for the purpose of constructing, equipping and furnishing new buildings and making improvements on the State Fairgrounds.

(2) Funds collected in excess of those required to retire any outstanding bond indebtedness may be used as operating revenue for the Department of Agriculture and Commerce for operating and administrative costs associated with the State Fairgrounds, and such excess funds received by the department shall be deposited in a special fund account managed by the department for the benefit of the State Fairgrounds.

(3) The State Treasurer is hereby directed to invest such excess funds to the credit of the special account managed by the department for the benefit of the State Fairgrounds.

HISTORY: Codes, 1942, § 4435-50.3; Laws, 1956, ch. 143, §§ 1-8; Laws, 1958, ch. 142; Laws, 1962, ch. 155; Laws, 1966, ch. 224, § 1; Laws, 1968, ch. 236, § 1; Laws, 1971, ch. 501, § 1; Laws, 1985, ch. 339, eff from and after July 1, 1985; Laws, 2020, ch. 417, § 9, eff from and after July 1, 2020; reenacted without change, Laws, 2021, ch. 362, § 5, eff from and after July 1, 2021.

Amendment Notes — The 2020 amendment, in (1), substituted "Department of Agriculture and Commerce" for "Mississippi Fair Commission created by Section 69-5-1"; in (2), substituted "Department of Agriculture and Commerce for operating and administrative costs associated with the State Fairgrounds" for "Mississippi Fair Commission," "department" for "Fair Commission," and "a special fund" for "its special fund," and added "managed by the department for the benefit of the State Fairgrounds"; and in (3), substituted "special account managed by the department for the benefit of the State Fairgrounds" for "Mississippi Fair Commission's special account."

The 2021 amendment reenacted the section without change.

Cross References — Power of Dept. of Finance and Administration to issue revenue bonds, see §§ 31-11-3 et seq.

Validation of bonds, generally, see §§ 31-13-1 et seq.

Commercial paper under the Uniform Commercial Code, see §§ 75-3-101 et seq.

§ 69-5-13. Requests for improvement of State Fairgrounds.

The Department of Agriculture and Commerce is hereby authorized and empowered, in its discretion, to declare by resolution the number and type buildings which need to be constructed and the type improvements that need to be made on the state fairgrounds, and file a certified copy of said resolution with the State Building Commission. If the State Building Commission believes such construction and improvements to be in the best public interest, and that receipts from admission to the State Fair reasonably shall be expected to produce sufficient revenues over a period not to exceed twenty (20) years to retire bonds issued to pay the cost of such improvements as well as the interest thereon, it may, in its discretion, approve the request of the Department of Agriculture and Commerce.

HISTORY: Codes, 1942, § 4435-50.3; Laws, 1956, ch. 143, §§ 1-8; Laws, 1958, ch. 142; Laws, 1962, ch. 155; Laws, 1966, ch. 224, § 1; Laws, 1968, ch. 236, § 1; Laws, 1971, ch. 501, § 1, eff from and after passage (approved April 8, 1971); Laws, 2020, ch. 417, § 10, eff from and after July 1, 2020; reenacted without change, Laws, 2021, ch. 362, § 6, eff from and after July 1, 2021.

Editor's Notes — Section 31-11-1 provides that the term "State Building Commission" or "Building Commission" wherever it appears in the laws of Mississippi shall be construed to mean the Governor's Office of General Services.

Amendment Notes — The 2020 amendment substituted "Department of Agriculture and Commerce" for "Mississippi Fair Commission" twice.

The 2021 amendment reenacted the section without change.

Cross References — Powers to Dept. of Finance and Administration, see §§ 31-11-3 et seq.

Validation of bonds, generally, see §§ 31-13-1 et seq.

Issuance of revenue bonds for improvements on state fair grounds, see § 69-5-15.

§ 69-5-15. Revenue bonds; issuance for improvement on State Fairgrounds.

(1) The words "revenue bonds" shall be deemed to mean bonds payable solely from the net revenue received by the Department of Agriculture and Commerce.

The Department of Finance and Administration shall have power and is hereby authorized, at one time or from time to time by resolution, to authorize the issuance of negotiable revenue bonds to provide funds for the purpose of paying all or any part of the cost of construction and/or improvements requested by the Department of Agriculture and Commerce pursuant to Section 69-5-13, or the cost of any purchase of property or improvements thereon pursuant to Section 17-17-49, but in no event shall the amount of such bonds outstanding at any one time exceed Four Million Dollars ($4,000,000.00); and shall cause a certified copy of such resolution to be delivered to the State Bond Commission. No bonds shall be issued under this section after April 23, 2008. Upon the receipt of said authorizing resolution, the State Bond Commission, acting as the issuing agent, shall issue and sell the revenue bonds of the State of Mississippi when authorized at the time and in the amount indicated in said resolution, prescribe the form of the bonds, advertise for and accept bids therefor, issue and sell the bonds, and do any and all other things necessary and advisable in the issuance and sale of said bonds. The principal of and the interest on such revenue bonds shall be payable solely from a special fund to be provided for that purpose from the net revenue received by the Department of Agriculture and Commerce. Such bonds shall bear date or dates, be in such denomination or denominations, bear interest at such rate or rates, provided that the bonds of any issue shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-103, be payable at such place or places within or without the State of Mississippi, shall mature at such time or times, be redeemable prior to maturity at such time or times and upon such terms, with or without premium, shall bear such registration privileges, and shall be substantially in such form, all as shall be determined by the State Bond Commission. Such bonds shall mature in annual installments beginning not more than three (3) years from date thereof and extending not more than twenty (20) years from date thereof. Such bonds shall be signed by the Chairman of the State Bond Commission, or by his facsimile signature, and the official seal of the State Bond Commission shall be affixed thereto, and attested by the Secretary of the State Bond Commission. The interest coupons, if any, to be attached to such bonds or other certificates thereon may be executed by the facsimile signatures of said officers. Whenever any such bonds shall have been signed by the officials herein designated to sign the bonds who were in office at the time of such signing but who may have ceased to be such officers prior to the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds and coupons shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until the delivery of the same to the purchaser or had been in office on the date such bonds may bear.

(2) No bonds shall be issued under the authority of this section prior to February 1, 1983; thereafter such bonds may be issued provided that the expansion and other improvements of the Mississippi Industrial Showcase and Trade Mart Building shall have priority in the use of the proceeds of such bonds and provided that the Department of Finance and Administration has approved plans to increase the size of such building by at least fifty percent (50%).

HISTORY: Codes, 1942, § 4435-50.3; Laws, 1956, ch. 143, §§ 1-8; Laws, 1958, ch. 142; Laws, 1962, ch. 155; Laws, 1966, ch. 224, § 1; Laws, 1968, ch. 236, § 1; Laws, 1971, ch. 501, § 1; Laws, 1981, ch. 514, § 2; Laws, 1982, ch. 396, § 1; Laws, 1983, ch. 480, § 1; Laws, 1985, ch. 477, § 15; Laws, 2008, ch. 504, § 4, eff from and after passage (approved Apr. 23, 2008); Laws, 2020, ch. 417, § 11, eff from and after July 1, 2020; reenacted without change, Laws, 2021, ch. 362, § 7, eff from and after July 1, 2021.

Amendment Notes — The 2020 amendment substituted "Department of Agriculture and Commerce" for "Mississippi Fair Commission" three times.

The 2021 amendment reenacted the section without change.

Cross References — Establishment and duties of state bond advisory division, see § 7-1-401 et seq.

Validation of bonds, generally, see §§ 31-13-1 et seq.

§ 69-5-17. Revenue bonds; sale, payment and redemption.

The State Bond Commission may sell the bonds referred to in Section 69-5-15 in such manner and for such price as it may determine to be for the best interest of the State of Mississippi, but no such sale shall be made at a price less than par plus accrued interest to date of delivery of the bonds to the purchaser. Notice of the sale of any such bonds shall be published at least one (1) time not less than twenty-one (21) days prior to the date of sale and shall be so published in one or more newspapers in Jackson, Mississippi, and having general circulation within the State of Mississippi, and in one or more other newspapers or financial journals as may be directed by the State Bond Commission.

The State Bond Commission, when issuing any bonds under the authority of Sections 69-5-11 through 69-5-27, shall provide that bonds maturing ten (10) years after the date of the issuance of such bonds may, at the option of the State Treasurer of the State of Mississippi, be called in for payment and redemption on any interest payment date thereafter prior to maturity.

HISTORY: Codes, 1942, § 4435-50.3; Laws, 1956, ch. 143, §§ 1-8; Laws, 1958, ch. 142; Laws, 1962, ch. 155; Laws, 1966, ch. 224, § 1; Laws, 1968, ch. 236, § 1; Laws, 1971, ch. 501, § 1; Laws, 1993, ch. 472, § 4, eff from and after passage (approved March 27, 1993).

Cross References — Validation of bonds, generally, see §§ 31-13-1 et seq.

§ 69-5-19. Revenue bonds; disposition of proceeds; additional bonds in case of deficit.

The proceeds of bonds sold pursuant to Section 69-5-17 shall be paid into the state treasury to the credit of a special fund known as the State Fair Fund, and shall be used solely for payment of the cost of the project or combined projects, and shall be disbursed upon order of the State Building Commission under such restrictions, if any, as the resolution authorizing the issuance of the bonds may provide. Provided, however, that any surplus in the State Fair Fund over and above the requirements to meet the payments on outstanding bonds and interest thereon when due may, in the discretion of the State Bond Commission, be invested in United States Government bills, notes or bonds, Mississippi General Obligation Bonds, Mississippi Revenue Bonds, Mississippi State Highway Bonds, or in bonds of any municipality or any county in Mississippi; and, upon the sale thereof, the entire proceeds of the sale, including all earnings from the investment, shall be paid into the State Fair Fund. If the proceeds of bonds sold pursuant to Section 69-5-17, by error of calculation or otherwise, shall be less than the cost of the project or combined projects, unless otherwise provided in the resolution authorizing the issuance of the bonds, additional revenue bonds may in like manner be issued to provide the amount of such deficit which, unless otherwise provided in the resolution authorizing the issuance of the bonds, shall be deemed to be one of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose; provided, that in no event shall the outstanding bonds total more than Seven Hundred Fifty Thousand Dollars ($750,000.00). If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which the bonds were issued, the surplus shall be paid into the fund established for the payment of the principal of and the interest on such bonds.

HISTORY: Codes, 1942, § 4435-50.3; Laws, 1956, ch. 143, §§ 1-8; Laws, 1958, ch. 142; Laws, 1962, ch. 155; Laws, 1966, ch. 224, § 1; Laws, 1968, ch. 236, § 1; Laws, 1971, ch. 501, § 1, eff from and after passage (approved April 8, 1971).

Editor's Notes — Section 31-11-1 provides that the term "State Building Commission" or "Building Commission" wherever it appears in the laws of Mississippi shall be construed to mean the Governor's Office of General Services.

§ 69-5-21. Revenue bonds; state not obligated by issuance.

Revenue bonds issued under the provisions of Sections 69-5-15 and 69-5-19 shall not be deemed to constitute a debt of the State of Mississippi or a pledge of the full faith and credit of the state, but such bonds shall be payable solely from the special revenues provided therefor as hereinabove set forth, and the issuance of such revenue bonds shall not directly, indirectly, or contingently obligate the state to levy or pledge any form of taxation whatever therefor, and all such bonds shall contain recitals on their face substantially covering the foregoing provisions of this section.

HISTORY: Codes, 1942, § 4435-50.3; Laws, 1956, ch. 143, §§ 1-8; Laws, 1958, ch. 142; Laws, 1962, ch. 155; Laws, 1966, ch. 224, § 1; Laws, 1968, ch. 236, § 1; Laws, 1971, ch. 501, § 1, eff from and after passage (approved April 8, 1971).

Cross References — Validation of bonds, generally, see §§ 31-13-1 et seq.

§ 69-5-23. Revenue bonds; negotiability.

All bonds issued under the provisions of Sections 69-5-15 and 69-5-19 shall constitute negotiable instruments within the meaning of the Uniform Commercial Code of the State of Mississippi.

HISTORY: Codes, 1942, § 4435-50.3; Laws, 1956, ch. 143, §§ 1-8; Laws, 1958, ch. 142; Laws, 1962, ch. 155; Laws, 1966, ch. 224, § 1; Laws, 1968, ch. 236, § 1; Laws, 1971, ch. 501, § 1, eff from and after passage (approved April 8, 1971).

§ 69-5-25. Revenue bonds; sections constitute full authority for issuance; validation.

Revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things which are specified or required by Sections 69-5-13 through 69-5-25. The bonds authorized under the authority of said sections shall be validated in the chancery court of Hinds County, Mississippi, in the manner and with the force and effect provided now or hereafter by Sections 31-13-1 through 31-13-11, Mississippi Code of 1972, for the validation of county, municipal, school district, and other bonds. The necessary papers for such validation proceedings shall be transmitted to the State Bond Attorney by the secretary of the State Bond Commission, and the required notice shall be published in a newspaper in the City of Jackson, having a general circulation within the State of Mississippi. Any resolution providing for the issuance of revenue bonds under the provisions of Sections 69-5-13 through 69-5-25 shall become effective immediately upon its adoption by the State Building Commission and need not be published or posted, and any such resolution may be adopted at any regular, special, or adjourned meeting of the State Building Commission by a majority of its members.

HISTORY: Codes, 1942, § 4435-50.3; Laws, 1956, ch. 143, §§ 1-8; Laws, 1958, ch. 142; Laws, 1962, ch. 155; Laws, 1966, ch. 224, § 1; Laws, 1968, ch. 236, § 1; Laws, 1971, ch. 501, § 1, eff from and after passage (approved April 8, 1971).

Editor's Notes — Section 31-11-1 provides that the term "State Building Commission" or "Building Commission" wherever it appears in the laws of Mississippi shall be construed to mean the Governor's Office of General Services.

§ 69-5-27. Department of Agriculture and Commerce authorized to borrow.

The Department of Agriculture and Commerce shall have the power and authority, in its discretion, to borrow money from any bank or banks in an amount not in excess of Two Hundred Thousand Dollars ($200,000.00), to be used for the repair, renovation or maintenance of buildings located at the Mississippi State Fairgrounds. The Department of Agriculture and Commerce may use any funds accruing to it to service and retire said indebtedness. Such loan shall not exceed a term of ten (10) years and shall bear interest at a rate not in excess of that provided for in Section 75-17-101.

Any loan secured under the provisions of this section shall be approved by the State Bond Commission.

HISTORY: Codes, 1942, § 4435-50.3; Laws, 1956, ch. 143, §§ 1-8; Laws, 1958, ch. 142; Laws, 1962, ch. 155; Laws, 1966, ch. 224, § 1; Laws, 1968, ch. 236, § 1; Laws, 1971, ch. 501, § 1; Laws, 1986, ch. 442, eff from and after July 1, 1986; Laws, 2020, ch. 417, § 12, eff from and after July 1, 2020; reenacted without change, Laws, 2021, ch. 362, § 8, eff from and after July 1, 2021.

Amendment Notes — The 2020 amendment substituted "Department of Agriculture and Commerce" for "Mississippi Fair Commission" the first time it appears and "Fair Commission" the second time it appears

The 2021 amendment reenacted the section without change.

§ 69-5-29. Free passes prohibited.

The Department of Agriculture and Commerce may by regulation establish policies for the issuance of free passes. These policies shall not prohibit officials of the fair or designated authority from entering said places for inspection purposes; shall not apply to press reporters designated to report news items; and shall not prohibit the commission from declaring specified days, such as Press Day, Legislator's Day, or any other special day.

HISTORY: Codes, 1942, § 4435-50.5; Laws, 1954, ch. 160, §§ 1, 2 [¶¶ 1-2]; Laws, 1985, ch. 331, eff from and after passage (approved March 15, 1985); Laws, 2020, ch. 417, § 13, eff from and after July 1, 2020; reenacted without change, Laws, 2021, ch. 362, § 9, eff from and after July 1, 2021.

Amendment Notes — The 2020 amendment substituted "Department of Agriculture and Commerce" for "Mississippi State Fair Commission."

The 2021 amendment reenacted the section without change.

Cross References — Powers and duties of State Fair Commission, see § 69-5-3.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 69-5-31. Department of Agriculture and Commerce authorized to hire certain law enforcement officers to provide security on state fairgrounds; powers, duties and responsibilities of officers.

(1) The Department of Agriculture and Commerce is authorized to hire and designate area law enforcement officers on a contractual basis to provide security and to enforce all laws of the State of Mississippi on the Mississippi State Fairgrounds Complex. All officers must have attended and satisfactorily completed the training course required for law enforcement officers at the Law Enforcement Officer's Training Academy or an equivalent facility. All officers must be current with this certification. A complete record of all law enforcement training of each employee will be maintained in each employee's record of employment. Furthermore, the Department of Agriculture and Commerce may enter into a contract with any certified law enforcement officer to provide security to the Department of Agriculture and Commerce with jurisdiction to enforce all laws of the State of Mississippi on property known as the "Mississippi State Fairgrounds Complex" and any and all of its outlying buildings and property.

(2)(a) All officers while in performance of their duty on the premises or at any of the facilities at the Mississippi State Fairgrounds Complex under the direction or control of the Department of Agriculture and Commerce and public property immediately adjacent to such facilities shall:

(i) Be required to dress in uniforms prescribed by the respective law enforcement agency by which he or she is employed; and

(ii) Be authorized to carry weapons.

(b) Employees designated as officers shall be duly sworn and vested with authority to bear arms and make arrests, and shall exercise primarily the responsibilities of the prevention and detection of crime, the apprehension of criminals, and the enforcement of the ordinances and policies of the Department of Agriculture and Commerce, a political subdivision of the State of Mississippi. Employees designated as such officers shall be considered law enforcement officers within the meaning of Section 45-6-3.

HISTORY: Laws, 2013, ch. 357, § 1, eff from and after passage (approved March 18, 2013); Laws, 2020, ch. 417, § 14, eff from and after July 1, 2020; reenacted without change, Laws, 2021, ch. 362, § 10, eff from and after July 1, 2021.

Amendment Notes — The 2020 amendment, substituted "Department of Agriculture and Commerce" for "Mississippi Fair Commission" or "Mississippi State Fair Commission" everywhere it appears in (1), (2)(a) and (2)(b); in (2)(a), inserted "at the Mississippi State Fairgrounds complex"; and in (2)(a)(i), substituted "the respective law enforcement agency by which he or she is employed" for "the Mississippi State Fair

Commission."

The 2021 amendment reenacted the section without change.

§ 69-5-33. Repealed.

Repealed by Laws, 2021, ch. 362, § 11, eff from and after July 1, 2021.
§ 69-5-33. [Laws, 2020, ch. 417, § 15, eff from and after July 1, 2020.]

Editor's Notes — Former § 69-5-33 was the repealer for §§ 69-5-1, 69-5-3, 69-5-5, 69-5-7, 69-5-8, 69-5-11, 69-5-13, 69-5-15, 69-5-27, 69-5-29 and 69-5-31, effective July 1, 2022.

ARTICLE 3.

STOCK SHOWS AND IMPROVEMENT OF LIVESTOCK.

Sec.

69-5-101. Mississippi Livestock Show; creation; directors.
69-5-103. Livestock show districts.
69-5-105. Holding of livestock shows.
69-5-107. Dairy shows.
69-5-109. Roundup shows.
69-5-111. Prizes or awards.
69-5-113. Supervisors may appropriate money in aid of livestock shows.
69-5-114. Certain livestock shows to be held at no charge for use of facilities .
69-5-115. Mississippi Delta Livestock Fair Association; creation; holding of livestock shows; prizes and awards.
69-5-117. Mississippi Delta Livestock Fair Association; appropriations by supervisors.
69-5-119. Mississippi Delta Livestock Fair Association; supervisors may levy tax.
69-5-121. Bulls for breeding; maintenance by certain counties; defrayal of expenses.

§ 69-5-101. Mississippi Livestock Show; creation; directors.

In order to encourage and promote the raising of livestock and dairy stock in the state, there is hereby created a body politic and corporate to be hereafter known as "Mississippi Livestock Show" which said body politic and corporate shall be under the management and control of the commissioner of agriculture and commerce, director of extension service, and president of Mississippi Livestock Council, hereinafter designated as directors, who shall serve without compensation.

HISTORY: Codes, 1942, § 4905; Laws, 1938, ch. 183; Laws, 1940, ch. 217; Laws, 1946, ch. 251, §§ 1-6; Laws, 1948, chs. 195 (paragraph 4, supra) 218 (paragraph 2, supra); Laws, 1968, ch. 244, § 1; Laws, 1971, ch. 346, § 1; Laws, 1972, ch. 359, § 1; Laws, 1973, ch. 300, § 1(a), eff from and after passage (approved January 22, 1973).

Cross References — Mississippi State Fair Commission, see §§ 69-5-1 et seq.
Commission for agricultural and industrial expositions, see §§ 69-5-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

The "Rules Committee" mentioned in rules and regulations of the Livestock Show Directors does not have authority to render final decisions related to livestock shows or to regulate participation in these shows. Spell, Sept. 23, 2005, A.G. Op. 05-0482.

RESEARCH REFERENCES

ALR.

Liability for injury inflicted by horse, dog, or other domestic animal exhibited at show. 68 A.L.R.5th 599.

§ 69-5-103. Livestock show districts.

For the purposes of this article, the State of Mississippi is hereby divided into five (5) livestock show districts, as follows:

(a) The Northwest District, which shall embrace the Counties of Coahoma, DeSoto, Grenada, Lafayette, Marshall, Panola, Quitman, Tallahatchie, Tate, Tunica and Yalobusha Counties. The place for holding the livestock show shall be at Batesville, in Panola County.

(b) The North Delta District, which shall embrace the Counties of Attala, Bolivar, Carroll, Holmes, Humphreys, Issaquena, Leflore, Montgomery, Sharkey, Sunflower and Washington Counties. The place for holding the livestock show shall be at Greenwood, in Leflore County.

(c) The Northeast District, which shall embrace the Counties of Alcorn, Benton, Calhoun, Chickasaw, Choctaw, Clay, Itawamba, Lee, Lowndes, Monroe, Noxubee, Oktibbeha, Pontotoc, Prentiss, Tippah, Tishomingo, Union, Webster and Winston. The place for holding the livestock show shall be at Verona, in Lee County.

(d) The Southwest District, which shall embrace the Counties of Adams, Amite, Claiborne, Copiah, Franklin, Hinds, Jefferson, Lawrence, Leake, Lincoln, Madison, Neshoba, Newton, Pike, Rankin, Scott, Simpson, Smith, Walthall, Warren, Wilkinson and Yazoo. The place for holding the livestock show shall be at Jackson, in Hinds County.

(e) The Southeast District, which shall embrace the counties of Clarke, Covington, Forrest, George, Greene, Hancock, Harrison, Jackson, Jasper, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Marion, Pearl River, Perry, Stone and Wayne. The place for holding the livestock show shall be at Hattiesburg, in Forrest County.

HISTORY: Codes, 1942, § 4905; Laws, 1938, ch. 183; Laws, 1940, ch. 217; Laws, 1946, ch. 251, §§ 1-6; Laws, 1948, chs. 195 (paragraph 4, supra) 218 (paragraph 2, supra); Laws, 1968, ch. 244, § 1; Laws, 1971, ch. 346, § 1; Laws, 1972, ch. 359, § 1; Laws, 1973, ch. 300, § 1(b); Laws, 1995, ch. 370, § 1, eff from and after July 1, 1995.

RESEARCH REFERENCES

ALR.
Liability for injury inflicted by horse, dog, or other domestic animal exhibited at show. 68 A.L.R.5th 599.

§ 69-5-105. Holding of livestock shows.

(1) There shall be held at the place named in each district a livestock show once each year at a time to be fixed by the directors, and under the supervision and rules and regulations promulgated by said directors at which the owners of livestock within the district where the livestock show is held may exhibit and compete for prizes or awards offered by the directors of such livestock shows or for prizes or awards offered by any person or corporation, through the directors, upon complying with the regulations governing such livestock show.

(2) If the building for holding the livestock show in the place designated in Section 69-5-103 is damaged or destroyed by fire, storm or other disaster, then the directors are authorized to allow for holding the show at another place in the district until building in the designated place be repaired or reconstructed.

HISTORY: Codes, 1942, § 4905; Laws, 1938, ch. 183; Laws, 1940, ch. 217; Laws, 1946, ch. 251, §§ 1-6; Laws, 1948, chs. 195 (paragraph 4, supra) 218 (paragraph 2, supra); Laws, 1968, ch. 244, § 1; Laws, 1971, ch 346, § 1; Laws, 1973, ch. 300, § 1(c, 9), eff from and after passage (approved January 22, 1973).

Cross References — Mississippi State Fair Commission, see §§ 69-5-1 et seq.
Commission for Agricultural and Industrial Expositions, see §§ 69-5-1 et seq.
Spraying of animal areas at state fairs to prevent disease, see § 69-15-103.

RESEARCH REFERENCES

ALR.
Liability for injury inflicted by horse, dog, or other domestic animal exhibited at show. 68 A.L.R.5th 599.

§ 69-5-107. Dairy shows.

Dairy shows shall be held, in addition to the livestock shows, each fall at Verona in Lee County, at Newton in Newton County, Tylertown in Walthall County, and at Purvis in Lamar County, and each summer at the Neshoba County Fair in Neshoba County, and any person in the state is entitled to participate in any of the dairy shows. The dairy shows shall be supervised and handled in the same manner as provided for livestock shows in Section 69-5-105, and each of the five (5) dairy shows herein provided for shall receive such part of the monies appropriated for the Mississippi Livestock Show as shall be specified in the act making such appropriation.

HISTORY: Codes, 1942, § 4905; Laws, 1938, ch. 183; Laws, 1940, ch. 217; Laws, 1946, ch. 251, §§ 1-6; Laws, 1948, chs. 195 (paragraph 4, supra) 218 (paragraph 2, supra); Laws, 1968, ch. 244, § 1; Laws, 1971, ch. 346, § 1; Laws, 1972, ch. 359, § 1; Laws, 1973, ch. 300, § 1 (d); Laws, 1979, ch. 335, § 1; Laws, 1995, ch. 370, § 2; Laws, 2002, ch. 476, § 1; Laws, 2013, ch. 349, § 1, eff from and after passage (approved March 18, 2013).

Cross References — Commission for Agricultural and Industrial Expositions, see §§ 69-5-1 et seq.

Mississippi State Fair Commission, see § 69-5-1.

RESEARCH REFERENCES

ALR.

Liability for injury inflicted by horse, dog, or other domestic animal exhibited at show. 68 A.L.R.5th 599.

§ 69-5-109. Roundup shows.

A roundup show shall be held, in addition to the livestock and dairy shows, once each year at a time and place to be fixed by the directors mentioned in Section 69-5-101, and under the supervision and rules and regulations promulgated by said directors. At such roundup show the owners of any livestock, who have won prizes or awards within the immediately preceding twelve months in any of the livestock or dairy shows referred to in this article may exhibit such livestock and compete for prizes or awards offered by the directors of such livestock shows or for prizes or awards offered by any person or corporation, through the directors, upon complying with the regulations governing such roundup show. The roundup shall be held in the district agreeing to pay the expense thereof.

HISTORY: Codes, 1942, § 4905; Laws, 1938, ch. 183; Laws, 1940, ch. 217; Laws, 1946, ch. 251, §§ 1-6; Laws, 1948, chs. 195 (paragraph 4, supra) 218 (paragraph 2, supra); Laws, 1968, ch. 244, § 1; Laws, 1971, ch. 346, § 1, eff from and after July 1, 1971.

Cross References — Commission for Agricultural and Industrial Expositions, see §§ 69-5-1 et seq.

Mississippi State Fair Commission, see § 69-5-1.

Spraying for animal areas at state fairs to prevent disease, see § 69-15-103.

RESEARCH REFERENCES

ALR.

Liability for injury inflicted by horse, dog, or other domestic animal exhibited at show. 68 A.L.R.5th 599.

§ 69-5-111. Prizes or awards.

The directors mentioned in Section 69-5-101 are hereby authorized to accept and hold for the use of the Mississippi Livestock Show or the dairy shows or the roundup show any appropriation, donation, or other fund donated to or to be awarded as prizes or awards under regulations promulgated by the directors.

HISTORY: Codes, 1942, § 4905; Laws, 1938, ch. 183; Laws, 1940, ch. 217; Laws, 1946, ch. 251, §§ 1-6; Laws, 1948, chs. 195 (paragraph 4, supra) 218 (paragraph 2, supra); Laws, 1968, ch. 244, § 1; Laws, 1971, ch. 346, § 1, eff from and after July 1, 1971.

RESEARCH REFERENCES

ALR.

Liability for injury inflicted by horse, dog, or other domestic animal exhibited at show. 68 A.L.R.5th 599.

§ 69-5-113. Supervisors may appropriate money in aid of livestock shows.

The board of supervisors of any county in Mississippi is hereby authorized, in its discretion, to appropriate money out of the general fund of the county, not to exceed the sum of One Thousand Dollars ($1,000.00) annually, to aid in the payment of premiums and awards made and given by livestock shows located, held and operated in the livestock show district in which such county is embraced and included, as provided in Section 69-5-103, and to help defray the expenses of such livestock shows.

Any funds appropriated, as provided in the first paragraph hereof, may be paid over to the directors of such livestock show, or to the local committee in charge of such livestock show, as the board of supervisors may determine; and such funds shall be used in helping to pay for prizes or awards offered at such show and other expenses incurred in promoting and carrying out such livestock shows.

HISTORY: Codes, 1942, § 4907; Laws, 1940, ch. 210; Laws, 1979, ch. 335, § 2, eff from and after July 1, 1979.

§ 69-5-114. Certain livestock shows to be held at no charge for use of facilities

In any livestock facility constructed, renovated or expanded with funds from the grant program authorized under Section 18, Chapter 530, Laws of 1995, the members of the Future Farmers of America, the 4-H Club, the Junior Livestock Association, the Mississippi Cattlemen's Association and the United States Pony Club, Inc., may hold up to three (3) animal or livestock shows or sales per year per facility at no charge for use of the facility or for utilities.

HISTORY: Laws, 1999, ch. 321, § 1; Laws, 2011, ch. 354, § 1; Laws, 2012, ch. 423, § 1; Laws, 2015, ch. 314, § 1, eff from and after July 1, 2015; Laws, 2018, ch. 316, § 1, eff from and after July 1, 2018.

§ 69-5-115. Mississippi Delta Livestock Fair Association; creation; holding of livestock shows; prizes and awards.

In order to encourage and promote the raising of livestock in the State of Mississippi there is hereby created a body politic and corporate to be hereinafter known as "Mississippi Delta Livestock Fair Association," which said body politic and corporate shall be under the management and control of the commissioner of agriculture and commerce, director of extension service, and president of the Mississippi Livestock Association, hereinafter designated as directors, who shall serve without compensation.

The Mississippi Delta Livestock Fair Association shall each year, at a time to be fixed by the directors, and under the supervision and rules and regulations promulgated by said directors, hold a livestock show at Greenwood in Leflore county, for the counties of Bolivar, Carroll, Coahoma, Holmes, Humphreys, Issaquena, Leflore, Sharkey, Sunflower, Washington, Yazoo, Tallahatchie, and Montgomery, at which the owners of livestock within said counties may exhibit and compete for prizes or awards offered by the directors of the said Mississippi Delta Livestock Fair Association, or for prizes or awards offered by any person or corporation through said directors, upon complying with the rules and regulations governing such livestock show.

No owner of livestock who has competed for a prize at any of the district livestock shows provided for in Section 69-5-105, during the current year, shall be eligible to compete for a prize at the show herein provided for in that year; and likewise, no one who competed for a prize at the show herein provided for during the current year shall be eligible to compete for a prize at any of the said district livestock shows during the current year.

The directors are hereby authorized to accept and hold for use at the Mississippi Delta Livestock Fair Association any appropriations, donations, or other funds designated to or to be awarded as prizes or awards under regulations promulgated by the directors.

HISTORY: Codes, 1942, § 4906; Laws, 1942, ch. 260.

§ 69-5-117. Mississippi Delta Livestock Fair Association; appropriations by supervisors.

The board of supervisors of any of the counties composing the Mississippi Delta Livestock Fair Association, as provided by Section 69-5-115, is authorized and empowered within its discretion to appropriate not exceeding fifteen hundred dollars per annum out of the general funds of such counties or as hereinafter provided for the purpose of maintaining and supporting the said Mississippi Delta Livestock Fair Association, and to aid in payment of premiums and awards given by livestock shows held by said association in said livestock district, and to help defray the expenses of such livestock shows; and any funds appropriated for the purpose herein provided may be appropriated by the board direct for the purpose herein mentioned, or the board may pay such funds direct to the directors of said livestock fair association, and said funds shall be used exclusively for the purpose herein mentioned; and if said funds are paid to the directors of said livestock fair association, then said funds shall be used exclusively by the directors of the livestock fair association for the purpose of maintaining and supporting the livestock fair association, and to aid in the payment of premiums and awards given by livestock shows held by said association in said district; and in the event said funds are appropriated and paid over to the directors of said association, it shall be the duty of said directors to keep a strict account of how such funds are used for that association, and they are hereby required to render to the board an itemized statement annually of all expenditures made by it under this section.

HISTORY: Codes, 1942, § 4906-01; Laws, 1944, ch. 252, § 1.

§ 69-5-119. Mississippi Delta Livestock Fair Association; supervisors may levy tax.

The board of supervisors of all counties in this state, composing the Mississippi Delta Livestock Fair Association as provided in Section 69-5-115 is authorized and empowered, in its discretion to levy annually a special tax of not exceeding one-fourth of a mill on the dollar, on all of the taxable property of the county, for the purpose of deriving sufficient funds for the purpose of maintaining and supporting the Mississippi Delta Livestock Fair Association, and to aid in the payment of premiums and awards given by livestock shows conducted by said association in said district, and to help defray the expenses of such livestock shows of said district. All revenue derived from such tax levy, shall be covered in a special fund of the county to be known as, "Mississippi Delta Livestock Fair Association Fund," and shall be used exclusively for the purpose herein mentioned. However, the levy made under the terms of this section shall not be considered in making disbursements under Sections 27-33-1 through 27-33-65, Mississippi Code of 1972.

HISTORY: Codes, 1942, § 4906-02; Laws, 1944, ch. 252, § 2.

§ 69-5-121. Bulls for breeding; maintenance by certain counties; defrayal of expenses.

(1) For the purpose of promoting, fostering and encouraging the upgrading and improving of livestock, any county with an assessed valuation of Fifteen Million Dollars ($15,000,000.00) or more, and designated as a place for the holding of a livestock show, by the provisions of Section 69-5-103, may upon the order of the board of supervisors purchase, keep, maintain or sell bulls for breeding purposes, but not more than five (5) such bulls may be owned by any such county at any one (1) time.

(2) The board of supervisors shall employ a proper and suitable person qualified by training and experience to aid, advise and assist livestock growers in the development of pastures, upgrading of livestock, or in any way helpful to encourage and promote the raising of livestock and who shall handle, care for, look after and be responsible for the bulls so bought, and such employee shall be charged with the duty of carrying out the provisions of this section in accordance herewith, and shall be paid such salary and expense as the board of supervisors may order, all of said sums to be paid out of the general funds of the county.

(3) Such bulls shall be placed at convenient locations over the county under suitable maintenance contracts for their care and upkeep, and shall be available at all reasonable times to farmers and stock growers upon the payment of a nominal charge for the purpose solely of assisting in defraying the expense of such care and upkeep, the amount of such fees governed solely by such maintenance costs, and to be fixed at the discretion of the board of supervisors.

(4) The board of supervisors shall make such rules and regulations for the services of said bulls as shall be for the best interests of the farmers and stock growers.

(5) The board of supervisors may set aside, appropriate and expend moneys from the general fund to pay the cost of employing such person and all expenses incidental to his employment and for the purchase of bulls for breeding purposes and to provide for the care and maintenance of such bulls and for defraying any and all expense necessary to carry out the intent of this section.

HISTORY: Codes, 1942, § 4907-01; Laws, 1944, ch. 248, §§ 1-5; Laws, 1986, ch. 400, § 47, eff from and after October 1, 1986.

RESEARCH REFERENCES

CJS.

3B C.J.S., Animals §§ 67 et seq.

CHAPTER 7.

MARKETS AND MARKETING; DOMESTIC FISH FARMING

Article 1.	State Marketing Commission. [Repealed].	69-7-1
Article 3.	Mississippi Central Market Board.	69-7-101
Article 5.	Poultry and Poultry Products.	69-7-201
Article 6.	Egg Marketing Board.	69-7-251
Article 7.	Egg Marketing.	69-7-301
Article 9.	Vegetable Marketing.	69-7-401
Article 11.	Domestic Fish Farming.	69-7-501
Article 13.	Catfish Marketing.	69-7-601
Article 15.	Mississippi Catfish Processor Fair Practices Act.	69-7-651
Article 17.	Weighing Devices for Farm-Raised Catfish.	69-7-701
Article 19.	Grading and Certification of Fruits and Nuts.	69-7-751

ARTICLE 1.

STATE MARKETING COMMISSION [REPEALED].

Sec.
69-7-1 through 69-7-29. Repealed.

§§ 69-7-1 through 69-7-29. Repealed.

Repealed by Laws of 1981, ch. 325, § 1, effective from and after July 1, 1981.

§ 69-7-1. [Codes, 1942, § 4434-05; Laws, 1944, ch. 249, § 5; Laws, 1946, ch. 227, § 2]

§ 69-7-3. [Codes, 1942, § 4435-14; Laws, 1944, ch. 249, § 14]

§ 69-7-5. [Codes, 1942, § 4435-01; Laws, 1944, ch. 249, § 1]

§ 69-7-7. [Codes, 1942, § 4435-02; Laws, 1944, ch. 249, § 2; Laws, 1946, ch. 227, § 1]

§ 69-7-9. [Codes, 1942, § 4435-11; Laws, 1944, ch. 249, § 11]

§ 69-7-11. [Codes, 1942, § 4435-03; Laws, 1944, ch. 249, § 3]

§ 69-7-13. [Codes, 1942, § 4435-12; Laws, 1944, ch. 249, § 12]

§ 69-7-15. [Codes, 1942, § 4435-09; Laws, 1944, ch. 249, § 9]

§ 69-7-17. [Codes, 1942, § 4435-04; Laws, 1944, ch. 249, § 4]

§ 69-7-19. [Codes, 1942, § 4435-06; Laws, 1944, ch. 249, § 6; Laws, 1946, ch. 227, § 3]

§ 69-7-21. [Codes, 1942, § 4435-07; Laws, 1944, ch. 249, § 7]

§ 69-7-23. [Codes, 1942, § 4435-08; Laws, 1944, ch. 249, § 8; Laws, 1946, ch. 227, § 4]

§ 69-7-25. [Codes, 1942, § 4435-08.5; Laws, 1950, ch. 307, §§ 1-4]

§ 69-7-27. [Codes, 1942, § 4435-13; Laws, 1944, ch. 249, § 13]

§ 69-7-29. [Codes, 1942, § 4435-10; Laws, 1944, ch. 249, § 10]

Editor's Notes — Former § 69-7-1 defined agricultural products.

Former § 69-7-3 provided that §§ 69-7-1 through 69-7-29 were cumulative and supplemental to other existing laws.

Former § 69-7-5 created the state marketing commission.

Former § 69-7-7 provided for appointment of members and their term of office on the state marketing commission.

Former § 69-7-9 provided for payment of expenses and compensation for members of the state marketing commission.

Former § 69-7-11 related to the headquarters and meeting place of the state marketing commission.

Former § 69-7-13 pertained to meetings of the state marketing commission.

Former § 69-7-15 related to records and reports of the state marketing commission.

Former § 69-7-17 contained provisions as to the duties and powers of the state marketing commission.

Former § 69-7-19 related to applications for grant of aid to agricultural and co-operative associations.

Former § 69-7-21 related to a survey of need required by former § 69-7-19.

Former § 69-7-23 contained provisions for grant of aid.

Former § 69-7-25 authorized additional grants of aid.

Former § 69-7-27 related to appointment of inspectors to assist the state commissioner of agriculture and commerce in carrying out the provisions of former Article 1.

Former § 69-7-29 established a state marketing commission fund.

ARTICLE 3.

MISSISSIPPI CENTRAL MARKET BOARD.

Sec.

69-7-101. Central Market Board abolished and powers and duties transferred to Department of Agriculture and Commerce.
69-7-103 through 69-7-107. Repealed.
69-7-109. Powers and duties of the Department of Agriculture and Commerce.
69-7-111. Repealed.
69-7-113. Department of Agriculture and Commerce to keep records and make reports.
69-7-115. Acquisition of facilities, equipment, etc.
69-7-117 and 69-7-119. Repealed.
69-7-121. Central market fund.

§ 69-7-101. Central Market Board abolished and powers and duties transferred to Department of Agriculture and Commerce.

The Mississippi Central Market Board is hereby abolished, and all of the powers, duties, property, contractual rights and obligations, and unexpended funds of that commission shall be transferred to the Department of Agriculture and Commerce on July 1, 2021. Wherever the term "Central Market Board" appears in any laws or regulation, the same shall mean the Department of Agriculture and Commerce, hereinafter referred to as "the department." The transfer of personnel shall be commensurate with the number and classification of positions allocated to the commission.

For the purpose of aiding, establishing and providing proper facilities for the efficient handling of farm and other food products in the interest of farmer, consumer, the general public and the State of Mississippi, and to assist in the disposal and sale of such products, there is hereby created a Mississippi Farmers Market, hereinafter referred to as the " market" at 929 High Street in Jackson.

HISTORY: Codes, 1942, § 4435-31; Laws, 1946, ch. 177, § 1; Laws, 2021, ch. 317, § 1, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment added the first paragraph; and in the second paragraph, substituted "Mississippi Farmers Market" for "Mississippi Central Market Board" and "market" for "board," and added "at 929 High Street in Jackson" at the end.

RESEARCH REFERENCES

Am. Jur.
52 Am. Jur. 2d, Markets and Marketing
§§ 33 et seq.

§§ 69-7-103 through 69-7-107. Repealed.

Repealed by Laws, 2021, ch. 317, §§ 6-8, eff from and after July 1, 2021.
§ 69-7-103. [Codes, 1942, § 4435-32; Laws, 1946, ch. 177, §§ 2, 6.]
§ 69-7-105. [Codes, 1942, § 4435-36; Laws, 1946, ch. 177. § 6; Laws, 1972, ch. 360, § 1; Laws, 1981, ch. 399, § 1, eff from and after July 1, 1981.]
§ 69-7-107. [Codes, 1942, § 4435-33; Laws, 1946, ch. 177, § 3.]

Editor's Note — Former § 69-7-103 determined members of the Central Market Board and terms of office.

Former § 69-7-105 related to the meetings of the Central MarketBoard and compensation of members.

Former § 69-7-107 established the headquarters and organizationof the Central Market Board.

§ 69-7-109. Powers and duties of the Department of Agriculture and Commerce.

The Department of Agriculture and Commerce shall have the power to:

(a) Fix salaries of any authorized employees of the market;

(b) Fix rentals and charges for each type of facility constructed in the market, taking into consideration the cost of such facility, the interest and amortization period required, a proper relationship between types of operators in the market, cost of operation, and the need for reasonable reserves, expansion and the like;

(c) Make investigations and hold hearings and conferences necessary to formulate and adopt a financial building and operating program for a market and make revisions from time to time;

(d) Make rules and regulations which shall govern all such business and all persons and vehicles coming upon the market;

(e) Provide and enforce penalties and liquidated damages relative to breaches of such rules and regulations and any contracts entered into;

(f) Lease the buildings and facilities to farmers, wholesale dealers, retailers and other persons engaged in the wholesale or retail marketing of perishable farm products;

(g) Determine and set the hours when the market may open and close during any day or night throughout the year;

(h) Plan, build, construct or cause to be built or constructed, or lease any facilities, on the grounds under the control of the department, that are deemed necessary for the successful operation of a wholesale or retail market for farm products;

(i) Rent or lease any necessary property, real or personal, on the grounds under the control of the department for the successful operation of the market. However, that before leasing or renting any property for use as a filling station or the sale of similar supplies and accessories, the department shall advertise and receive sealed bids therefor, and shall have the power to reject any and all of such bids, or to accept the highest and best bid made therefor, and the lessee shall erect such buildings and add such facilities as necessary to carry out the provisions of this article at the expense of the lessee in addition to any other monies paid as lease money to said board for the purpose of operating a service station. Such establishment shall not be tax exempt. No filling station shall be leased for a monthly rental less than One Cent (1¢) per gallon for each gallon of gasoline sold;

(j) Employ an attorney as prescribed in Section 69-1-14.

The department shall also have full power and authority to rent or lease real property, on the grounds under the control of the department, not otherwise used, for a period not to exceed twenty-five (25) years to private concerns for the purpose of processing agricultural products, and providing such facilities found necessary by the department to carry out the purposes of this article, and such facilities, structures, buildings, or other improvements erected or placed thereon by private concerns shall be subject to taxation the same as private property, provided, however, that improvements or facilities erected thereon for processing agricultural products shall not be assessed or taxed until five (5) years after completion of construction. The improvements and facilities erected on said leased property shall be liable for ad valorem taxes and shall be assessed and levied against said leasehold separately from the fee of said lands, and upon failure to pay taxes upon same when due, said facilities and improvements shall be sold by the tax collector as other property is sold for the nonpayment of taxes, but only such rights of the lessee under said lease contract shall be so sold. Upon the failure to pay taxes promptly when due on said lease, the department shall have the power to cancel and terminate said lease immediately and shall thereupon be authorized to lease or re-lease same to another private individual or concern as herein provided.

The provisions hereof regarding taxation shall not apply to those buildings, structures and facilities erected on said property by the department.

The department shall maintain or operate local market.

HISTORY: Codes, 1942, § 4435-37; Laws, 1946, ch. 177, § 7; Laws, 1948, ch. 190, §§ 1, 2; Laws, 1954, ch. 152; Laws, 1983, ch. 365, § 4, eff from and after July 1, 1983; Laws, 2021, ch. 317, § 2, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in the introductory paragraph, substituted "Department of Agriculture and Commerce" for "board"; in (f), inserted "retailers" and "retail"; in (h), substituted "department" for "Mississippi Central Market Board" and inserted "or retail"; in (i), substituted "department" for "Mississippi Central Market Board, as may be deemed advisable by the board" and "the department shall" for "the board shall"; in the second paragraph, substituted "the department" for "said board" both times it appears, "the Mississippi Central Market Board" and "the board"; in the third paragraph, substituted "the department" for "the board": and rewrote the last paragraph, which read: "The central market board shall maintain or operate local market, after the local board or members of any local market have voted to transfer its activity to the state market board. However, such local market shall be in the sale of produce or farm products, and the central market board shall not be required to assume any outstanding indebtedness in connection with the acquisition of such local market facilities."

RESEARCH REFERENCES

Am. Jur.
52 Am. Jur. 2d, Markets and Marketing §§ 22, 36 et seq.

§ 69-7-111. Repealed.

Repealed by Laws, 2021, ch. 317, § 9, eff from and after July 1, 2021.

§ 69-7-111. [Codes, 1942, § 4435-34; Laws, 1946, ch. 177, § 4; Laws, 1966, ch. 445, § 7, eff from and after July 1, 1966.]

Editor's Note — Former § 69-7-111 determined the bond, duties, and compensation of the state market manager.

§ 69-7-113. Department of Agriculture and Commerce to keep records and make reports.

The Department of Agriculture and Commerce shall keep, or have kept, records of all leases, rentals, sales, and expense items which shall be audited as other state records are audited and the department shall make, or cause to be made, a report of receipts and disbursements and other information pertaining to the operations of the market to each regular session of the Legislature.

HISTORY: Codes, 1942, § 4435-40; Laws, 1946, ch. 177, § 10; Laws, 2021, ch. 317, § 3, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, substituted "Department of Agriculture and Commerce" for "market manager" and "the department" for "he."

§ 69-7-115. Acquisition of facilities, equipment, etc.

The Department of Agriculture and Commerce is hereby authorized subject to the approval of the building commission to acquire by purchase, donation, lease or condemnation, and for and in the name of the State of Mississippi, a suitable site or sites, accessible to highways and railroads and air terminal facilities, and to erect and install thereon such structures, facilities, and equipment as may be necessary for the inspection, grading, standardization, classification, refrigeration, processing and marketing of such products (for both food and feed), within the amount appropriated for such purposes by the Legislature and subject to the approval of the building commission.

HISTORY: Codes, 1942, § 4435-35; Laws, 1946, ch. 177, § 5; Laws, 2021, ch. 317, § 4, eff from and after July 1, 2021.

Editor's Notes — Section 31-11-1 provides that the term "State Building Commission" or "Building Commission" wherever it appears in the laws of Mississippi shall be construed to mean the Governor's Office of General Services.

Amendment Notes — The 2021 amendment substituted "Department of Agriculture and Commerce" for "board."

Cross References — Powers and duties of Dept. of Finance and Administration, see § 31-11-3.

§§ 69-7-117 and 69-7-119. Repealed.

Repealed by Laws, 2021, ch. 317, §§ 10 and 11, eff from and after July 1, 2021.

§ 69-7-117. [Codes, 1942, § 4435-35.5; Laws, 1950, ch. 196, §§ 1-4.]
§ 69-7-119. [Codes, 1942, § 4435-38; Laws, 1946, ch. 177, § 8.]

Editor's Notes — Former § 69-7-117 authorized the management and disposition of property.

Former § 69-7-119 mandated limitations on powers of the CentralMarket Board.

§ 69-7-121. Central market fund.

All funds collected under this article shall be deposited in the State Treasury to the credit of Central Market Fund and shall be used solely for payment of the expenses of operation and maintenance of such market and facilities including the acquisition, leasing, maintenance and operation of local farm market facilities, and for the employment of such production and marketing personnel as will, in the discretion of the Department of Agriculture and Commerce, more effectively promote the operation of such market, on warrants issued according to law pursuant to payment vouchers signed by the Commissioner or his designee.

HISTORY: Codes, 1942, § 4435-39; Laws, 1946, ch. 177, § 9; Laws, 1954, ch. 152, § 2; Laws, 1985, ch. 342; Laws, 1991, ch. 312, § 1, eff from and after July 1, 1991; Laws, 2021, ch. 317, § 5, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment deleted "located at other points in the State of Mississippi as provided for herein" following "local farm market facilities"; and substituted "Department of Agriculture and Commerce" for "Central Market Board," and Commissioner" for "chairman."

ARTICLE 5.

POULTRY AND POULTRY PRODUCTS.

Sec.
69-7-201. What constitutes "doing business"; resident agent; service of process.
69-7-203. License required; fees; renewals.
69-7-205. Issuance and renewal or refusal of license.
69-7-207. Application for license.
69-7-209. Appeal from refusal to grant license.
69-7-211. Injunctions.
69-7-213. Penalties.

§ 69-7-201. What constitutes "doing business"; resident agent; service of process.

For the purposes of this article, every person, firm, corporation, association or other legal entity who is engaged in hatching baby chicks and ratites, including baby ostrich, emu and rhea, for sale, distribution or under contract, either oral or written, for the production of ostrich, emu, rhea, broilers, laying hens, roosters or eggs, and every person, firm, partnership, corporation, association, or other legal entity, who procures the production of ostrich, emu, rhea, broilers, laying hens, roosters or eggs for sale, distribution or processing by contract with others, either oral or written, shall be considered "doing business" within the State of Mississippi, and every person, firm, corporation, association or other legal entity that is a nonresident of this state and who desires to "do business" within this state as covered by this article shall, as a condition precedent to obtaining a license hereunder, appoint or designate a resident of the State of Mississippi as agent for the service of process and shall file such appointment or designation with the Secretary of State. Thereafter, the service of summons upon the agent appointed or designated shall be sufficient to give the courts of this state jurisdiction of any cause of action arising under the terms of this article. Any person, firm, partnership, corporation, association or other legal entity who "does business" under the provisions of this article, whether under a license or otherwise, without appointing or designating an agent as herein required shall be deemed to have appointed the Secretary of State as such agent and may be proceeded against in courts of this state by service of process upon the Secretary of State.

HISTORY: Codes, 1942, § 4435-81; Laws, 1960, ch. 154, § 1; Laws, 1993, ch. 417, § 2; Laws, 1996, ch. 543, § 5, eff from and after July 1, 1996.

Cross References — Duties of Secretary of State, generally, see § 7-3-5.

Service of process upon agents of firms or corporations, generally, see § 13-3-41.

For the rule governing the service of process upon persons listed in this statute, see Miss. R. of Civ. P. 4.

§ 69-7-203. License required; fees; renewals.

Every person, firm, partnership, association, corporation, or other legal entity in this state, engaged in the business of operating an incubator, or incubators, for hatching baby chicks and ratites, including baby ostrich, emu and rhea, for sale, distribution or under contract, either oral or written, for the production of ostrich, emu, rhea, broilers, laying hens, roosters or eggs for sale, distribution or processing by contract with others, either oral or written, is required to obtain a license to engage in such business from the Commissioner of Agriculture and Commerce of the State of Mississippi. The Commissioner of Agriculture and Commerce shall charge a fee of Five Dollars ($5.00) for such license and a like fee of Five Dollars ($5.00) for the renewal thereof, which license must be renewed annually on or before July 1 of each succeeding year. The fees charged for the license shall be paid by the commissioner to the State Treasurer, who shall deposit the same in the General Fund in the State Treasury. Strict accounting of all fees charged hereunder shall be made by the commissioner.

Nothing in this article shall be construed to require any person, firm, partnership, corporation, association, or other legal entity, who may be engaged in the businesses covered by this article wholly for themselves, or any person, firm, partnership, corporation, association, or other legal entity, who purchases his own flocks and becomes wholly responsible for the growing and feeding thereof, to obtain a license hereunder.

HISTORY: Codes, 1942, § 4435-82; Laws, 1960, ch. 154, § 2; Laws, 1970, ch. 255, § 3; Laws, 1993, ch. 417, § 3; Laws, 1996, ch. 543, § 6, eff from and after July 1, 1996.

Cross References — Duties of Commissioner of Agriculture, generally, see § 69-1-13.

OPINIONS OF THE ATTORNEY GENERAL

Based upon a factual situation presented regarding a typical grower/processor contract, a processor engaged in a grower/processor contract for the production of broilers or laying hens is required to obtain a license from the Department of Agriculture and Commerce as set forth in the statute. Spell, Jr., May 8, 2000, A.G. Op. #2000-0210.

A processor raising broilers or laying hens on his own land, paying all the costs of raising the birds, and employing a grower by way of a salary (thus making the grower an employee of the processor) is not required to be licensed with the Department of Agriculture and Commerce under the statute. Spell, Jr., May 8, 2000, A.G. Op. #2000-0210.

RESEARCH REFERENCES

Am. Jur.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration – by license holder – against administrative agency – to enjoin further proceedings to suspend or revoke license – attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

§ 69-7-205. Issuance and renewal or refusal of license.

The commissioner of agriculture and commerce is hereby authorized, empowered and directed to promulgate proper rules and regulations for the issuance of the license and for the renewal thereof, and for the preparation of the proper forms to be used, and the commissioner shall, to the best of his ability, inquire into the financial responsibility of every applicant for license and shall diligently endeavor to determine such applicants' business reputation. Should the investigation made by the commissioner indicate insolvency of the applicant and such applicant is unable to establish the proof of his financial responsibility by furnishing proper credit references and financial statements, he may furnish to the commissioner copies of any contracts he may have with other allied and related businesses that would justify the commissioner in issuing the license. Otherwise, the commissioner shall not issue the license to any person who cannot reasonably establish his financial responsibility to carry out any contract he may propose to enter into.

HISTORY: Codes, 1942, § 4435-83; Laws, 1960, ch. 154, § 3, eff from and after passage (approved May 10, 1960).

§ 69-7-207. Application for license.

The Commissioner of Agriculture and Commerce shall prescribe and furnish the necessary and proper forms for an application for a license required by Section 69-7-203, and such application form must be signed by the applicant, under oath, as to the correctness of the information furnished therein. Any applicant who shall knowingly furnish any false or fraudulent information for the purpose of obtaining a license hereunder, when such application has been duly and properly signed under oath, shall be guilty of perjury and subject to the penalties therefor.

HISTORY: Codes, 1942, § 4435-84; Laws, 1960, ch. 154, § 4, eff from and after passage (approved May 10, 1960).

§ 69-7-209. Appeal from refusal to grant license.

Any person feeling aggrieved with the decision of the commissioner of agriculture and commerce in refusing to grant a license hereunder shall have recourse by an appeal to the chancery court of Hinds County, Mississippi, by petition filed within thirty days from the date of final refusal to issue such license. The chancery court of Hinds County shall have and it is hereby given full jurisdiction of such appeal and it may enter any appropriate orders therein in term time or in vacation.

HISTORY: Codes, 1942, § 4435-83; Laws, 1960, ch. 154, § 3, eff from and after passage (approved May 10, 1960).

Cross References — Jurisdiction of chancery court, generally, see § 9-5-81.

§ 69-7-211. Injunctions.

Should any person continue to operate such business without having complied with the provisions of this article, the commissioner of agriculture and commerce is authorized to file petition for an injunction in the chancery court of the district where the violator may reside, or in the district where the violation occurred. The chancery court shall have and it is hereby given full jurisdiction to hear and determine the petition and enter any and all appropriate orders in term time and in vacation.

HISTORY: Codes, 1942, § 4435-85; Laws, 1960, ch. 154, § 5, eff from and after passage (approved May 10, 1960).

Cross References — Jurisdiction of chancery court, generally, see § 9-5-81.
Application for license, see § 69-7-207.

§ 69-7-213. Penalties.

Any person who continues the operation of any of the businesses for which a license is required under the provisions of this article, without having complied with the provisions hereof, shall be guilty of a misdemeanor and shall be subject to a fine of not to exceed Five Hundred Dollars ($500.00).

HISTORY: Codes, 1942, § 4435-85; Laws, 1960, ch. 154, § 5, eff from and after passage (approved May 10, 1960).

Cross References — Jurisdiction of chancery court, generally, see § 9-5-81.
Application for license, see § 69-7-207.
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ARTICLE 6.

EGG MARKETING BOARD.

Sec.
69-7-251. Definitions.
69-7-253. Board continued; membership; terms; vacancies.
69-7-255. Quorum; oath; compensation; board a body corporate; powers.
69-7-257. Administration of article; rules and regulations.
69-7-259. General powers and duties of board.
69-7-261. Commodity advertising, publicity, consumer information and sales promotion.
69-7-263. Assessment on eggs; costs of inspections; utilization of proceeds of assessment.
69-7-265. Records and reports of dealers and handlers.
69-7-267. Licenses.
69-7-269. Producers prohibited from distributing eggs on which assessment not paid; payment of assessment by dealer.
69-7-271. Civil penalties.
69-7-273. Criminal penalties.
69-7-275. Application.

Sec.
69-7-277. Repealed.

Editor's Notes — Laws of 1979, ch. 346, § 14, provided that Sections 69-7-251 through 69-7-275 would stand repealed from and after July 1, 1987. Subsequently, Laws of 1987, ch. 506, § 14, advanced the repeal date to July 1, 1991. Thereafter, Laws of 1991, ch. 331, § 14, amended Laws of 1987, ch. 506, § 14, deleting the provision for the repeal of Sections 69-7-251 through 69-7-275. However, Laws of 1991, ch. 331, § 15, added a new section, 69-7-277, which provided for the prospective repeal of Sections 69-7-251 through 69-7-275. Section 69-7-277 was itself subsequently repealed by Laws of 1996, ch. 475, § 14, eff from and after July 1, 1996.

§ 69-7-251. Definitions.

As used in this article, the terms defined in this section shall have the meanings herein given to them, except where the context expressly indicates otherwise:

(a) "Board" means the Mississippi Egg Marketing Board.

(b) "Person" means every person, partnership, firm, company, association, corporation or legal entity engaged in the production or sale of eggs in the state.

(c) "Eggs" means pullet and hen eggs only.

(d) "Handler" and "dealer" means any person engaged within the state as a wholesale distributor in the business of distributing eggs in Mississippi regardless of where the eggs are produced.

(e) "Producer" means any person engaged in the business of producing eggs in Mississippi, either as an owner or as an officer or stockholder of a business engaged in producing eggs in Mississippi, or any person deriving a profit from such a business.

(f) "Ship" or "shipping" means to move or cause to move eggs in intrastate or interstate or foreign commerce by rail, truck, boat, airplane or any other means.

(g) "Shipper" means any person engaged in shipping or causing to be shipped eggs in intrastate or interstate or foreign commerce, whether owner, agent or otherwise.

(h) "Case" means a standard case of thirty (30) dozen eggs.

HISTORY: Laws, 1973, ch. 427, § 1; Laws, 1976, ch. 374, § 1; Laws, 1979, ch. 346, § 1; Laws, 1981, ch. 308, §§ 1, 14; reenacted, Laws, 1983, ch. 314, § 1; reenacted, Laws, 1987, ch. 506, § 1; reenacted, Laws, 1991, ch. 331, § 1; reenacted without change, Laws, 1996, ch. 475, § 1, eff from and after July 1, 1996.

Cross References — Inapplicability of "producer" to person who performs services of caring for chickens and related services for contractor or employer, see § 69-7-275.

§ 69-7-253. Board continued; membership; terms; vacancies.

There is hereby continued the Mississippi Egg Marketing Board with domicile at the capital city of the state. The board shall be composed of five (5) members: one (1) member shall be the Commissioner of Agriculture and Commerce as ex officio member. One (1) member shall be an egg producer as defined in this article. Three (3) members shall be employed by or associated with egg industry related businesses, or disciplines which include poultry support, marketing, promotion, home economist, extension poultry science agencies and the Mississippi Department of Agriculture and Commerce. No more than one (1) industry-related business or discipline member shall be employed by, associated with or have a financial interest in the same company or subsidiary.

The Governor shall appoint the members from a list provided by the board based upon a poll of its members. The terms shall be for six (6) years. Each member shall serve, after the completion of his term, until his successor is appointed and duly qualified. Each vacancy shall be filled by appointment for the unexpired term.

The terms of office of persons appointed under the original act shall continue until the expiration of the terms to which they were appointed, the intent of this article being to continue the Mississippi Egg Marketing Board.

HISTORY: Laws, 1973, ch. 427, § 2; Laws, 1976, ch. 374, § 2; Laws, 1979, ch. 346, § 2; Laws, 1981, ch. 308, § 2; reenacted, Laws, 1983, ch. 314, § 2; reenacted and amended, Laws, 1987, ch. 506, § 2; reenacted, Laws, 1991, ch. 331, § 2; reenacted without change, Laws, 1996, ch. 475, § 2; Laws, 2000, ch. 422, § 1; Laws, 2008, ch. 357, § 1, eff from and after passage (approved Mar. 26, 2008).

§ 69-7-255. Quorum; oath; compensation; board a body corporate; powers.

A majority of the members of the board shall constitute a quorum for the transaction of all business and the carrying out of the duties of the board. Each member shall subscribe to the oath of office prescribed for state officers. No member shall receive any salary, but each member shall receive per diem compensation as authorized in Section 25-3-69, and shall be reimbursed for expenses in the manner and amount specified in Section 25-3-41.

The Mississippi Egg Marketing Board shall be and is hereby declared and created a corporate body. The board shall have the power to contract and be contracted with, and shall have and possess all the powers of a body corporate for all purposes necessary for fully carrying out the provisions of this article. The board shall adopt a corporate seal by which it shall authenticate its proceedings. Copies of the proceedings, records and acts of the board and certificates purporting to relate the facts concerning such proceedings, records and acts signed by the chairman of the board and authenticated by said seal shall be prima facie evidence thereof in all the courts of the state.

HISTORY: Laws, 1973, ch. 427, § 3; Laws, 1976, ch. 374, § 3; Laws, 1979, ch. 346, § 3; Laws, 1981, ch. 308, § 3; reenacted and amended, Laws, 1983, ch. 314, § 3; reenacted, Laws, 1987, ch. 506, § 3; reenacted, Laws, 1991, ch. 331, § 3; reenacted without change, Laws, 1996, ch. 475, § 3, eff from and after July 1, 1996.

Cross References — Uniform per diem compensation of officers and employees of state boards, commissions and agencies, see § 25-3-69.

§ 69-7-257. Administration of article; rules and regulations.

Except for the collections of the proceeds of the assessment levied hereunder, which shall be collected by the Commissioner of Agriculture and Commerce, the administration of this article shall be vested in the Mississippi Egg Marketing Board. The board shall prescribe reasonable rules and regulations for the enforcement of the provisions of this article.

HISTORY: Laws, 1973, ch. 427, § 4; Laws, 1976, ch. 374, § 4; Laws, 1981, ch. 308, § 4; reenacted, Laws, 1983, ch. 314, § 4; reenacted, Laws, 1987, ch. 506, § 4; reenacted, Laws, 1991, ch. 331, § 4; reenacted without change, Laws, 1996, ch. 475, § 4, eff from and after July 1, 1996.

§ 69-7-259. General powers and duties of board.

The powers and duties of the board shall include, but be not limited to, the following:

(a) To elect a chairman and vice chairman and, from time to time, such other officers as it may deem advisable, and when necessary, to alter, rescind, modify or amend the rules and regulations necessary for the exercise of its powers and the performance of its duties. Such rules and regulations shall have the force and effect of law when not inconsistent therewith.

(b) Employ such personnel as it deems necessary to carry out the purposes of this article, and to fix and pay the salaries thereof, including technical and professional services on a fee basis when necessary.

(c) Make such advertising contracts and other agreements as it deems appropriate, including, particularly, cooperative agreements with other advertisers of similar allied products.

(d) Make cooperative agreements with the Mississippi Department of Agriculture and Commerce and the Research and Marketing Administration of the United States Department of Agriculture and other associations, public or private, for conducting consumer and producer and dealer information as to the food value of eggs, and also for instruction on grades and packs and how to evaluate their merits in order to expand the market for Mississippi produced eggs. The board may use as much of its funds as it deems necessary for matching moneys available from the Research and Marketing Administration of the United States Department of Agriculture or of any agencies of the state or political subdivision thereof.

(e) Keep books, records and accounts of all its proceedings, which shall be open to inspection and audit by the State Auditor at all times.

(f) To purchase or authorize the purchase of all office equipment and supplies and to incur all other reasonable and necessary expenses and obligations necessary to carry out the purposes of this article.

(g) Investigate and cause to be prosecuted any violators of this article.

(h) Suspend, revoke or take other disciplinary action involving the licenses issued under the provisions of this article.

HISTORY: Laws, 1973, ch. 427, § 5; Laws, 1976, ch. 374, § 5; Laws, 1981, ch. 308, § 5; reenacted, Laws, 1983, ch. 314, § 5; reenacted, Laws, 1987, ch. 506, § 5; reenacted, Laws, 1991, ch. 331, § 5; reenacted without change, Laws, 1996, ch. 475, § 5, eff from and after July 1, 1996.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

RESEARCH REFERENCES

Am. Jur.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration – by license holder – against administrative agency – to enjoin further proceedings to suspend or revoke license – attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

§ 69-7-261. Commodity advertising, publicity, consumer information and sales promotion.

The board shall plan and conduct campaigns for commodity advertising, publicity, consumer information and sales promotion to increase consumption of eggs and may contract for any advertising, publicity, consumer information and sales promotion services. To accomplish such purposes, the board shall have power and it shall be the duty of the board to disseminate information:

(a) Relating to eggs and the importance thereof in the diet of the people in preserving public health, economy thereof and the importance of eggs in the nutrition of children.

(b) On the various economic aspects relating to the business of producing and marketing eggs in Mississippi.

(c) To decide upon some distinctive and suggestive emblem for Mississippi produced eggs, and to promote the use of same in the advertisement of Mississippi eggs.

HISTORY: Laws, 1973, ch. 427, § 6; Laws, 1976, ch. 374, § 6; Laws, 1979, ch. 346, § 6; Laws, 1981, ch. 308, § 6; reenacted, Laws, 1983, ch. 314, § 6; reenacted, Laws, 1987, ch. 506, § 6; reenacted, Laws, 1991, ch. 331, § 6; reenacted without change, Laws, 1996, ch. 475, § 6, eff from and after July 1, 1996.

§ 69-7-263. Assessment on eggs; costs of inspections; utilization of proceeds of assessment.

There is hereby imposed and levied an assessment at a rate not to exceed Three Cents (3¢) per case on all eggs produced in Mississippi wherever distributed or marketed and on all eggs marketed in Mississippi wherever distributed or produced. The rate of assessment shall be determined by the board. At the time of the sale, the egg producer shall provide evidence that all assessments provided herein have been paid. However, if the first sale of the eggs is made to a dealer or distributor, the producer shall pay to the dealer or the distributor the amount of the assessment owed; whereupon the dealer or distributor to whom such payment is made shall remit the assessment to the Commissioner of Agriculture and Commerce in accordance with the rules and regulations established and promulgated by the board. The board or the commissioner shall have the power to cause any duly authorized agent or representative to enter upon the premises of any dealer or handler of eggs and examine, or cause to be examined by such agent, any books, papers and records which deal in any way with respect to the payment of the assessment or enforcement of the provisions of this article.

All costs incurred by the board or the commissioner in examining or causing the examination of such books, papers and records shall be taxed against the dealer or handler. Cost shall be assessed at the rate of One Hundred Dollars ($100.00) per day or fraction thereof for each agent conducting the examination. Travel expenses shall be assessed in the manner and amount specified in Section 25-3-41, and other expenses shall be assessed at actual cost. All costs taxed against a dealer or handler for the examination of books, papers and records shall be paid within fifteen (15) days from the date such notice of cost is mailed to the dealer or handler.

The proceeds of the assessment levied under this article shall be collected by the Commissioner of Agriculture and Commerce in such manner and method as shall be prescribed by him in accordance with the provisions of this article. The funds derived from the assessment shall be paid into the State Treasury on or before the fifteenth day of each month and shall be deposited in a special fund in the State Treasury, which shall be established by the State Treasurer to the credit of the Mississippi Egg Marketing Board, and such funds shall be used by the board solely for the administration of this article. All costs, expenses and obligations incurred by the board for its operation and carrying out the purposes of this article shall be paid out of the special fund herein provided for after expenditures thereof shall have been authorized by the Legislature. Provided further, that the Mississippi Egg Marketing Board shall render to the Mississippi Legislature a detailed annual report of all collections and expenditures of the moneys collected under the provisions of this article. Any egg producer may request and receive a refund of the amount of assessment paid for the previous reporting period, provided he makes a written application with the Mississippi Egg Marketing Board within sixty (60) days from date of payment supported by bona fide copy of payment voucher and copy of canceled check. The application forms shall be prepared by the board and shall be available at the request of the producer. All such applications shall be processed and refunds paid within sixty (60) days after the funds have been received by the board.

HISTORY: Laws, 1973, ch. 427, § 7; Laws, 1976 ch. 374, § 7; Laws, 1979, ch. 346,

§ 7; Laws, 1981, ch. 308, § 7; reenacted, Laws, 1983, ch. 314, § 7; reenacted and amended, Laws, 1987, ch. 506, § 7; reenacted, Laws, 1991, ch. 331, § 7; reenacted without change, Laws, 1996, ch. 475, § 7, eff from and after July 1, 1996.

§ 69-7-265. Records and reports of dealers and handlers.

Every dealer or handler shall keep a complete and accurate record of all eggs handled by him. Such records shall be in such form and contain such other information as the board shall, by rule or regulation, prescribe. The records shall be preserved by said dealers or handlers for a period of one (1) year and shall be offered for inspection at any time upon oral or written demand by the board, the Commissioner of Agriculture and Commerce, or any duly authorized agent or representative of either.

Every dealer or handler, at such time or times as the board or the Commissioner of Agriculture and Commerce may require, shall submit reports or other documentary information deemed necessary for the efficient and equitable collection of the assessment imposed under this article.

HISTORY: Laws, 1973, ch. 427, § 8; Laws, 1976, ch. 374, § 8; Laws, 1979, ch. 346, § 8; Laws, 1981, ch. 308, § 8; reenacted, Laws, 1983, ch. 314, § 8; reenacted, Laws, 1987, ch. 506, § 8; reenacted, Laws, 1991, ch. 331, § 8; reenacted without change, Laws, 1996, ch. 475, § 8, eff from and after July 1, 1996.

§ 69-7-267. Licenses.

Every person owning over three thousand (3,000) hens, or who is engaged or who engages in the business of selling eggs to a retailer who retails eggs in the State of Mississippi shall prior to offering for sale or selling eggs to a retailer, secure a license for such business from the Commissioner of Agriculture and Commerce, which license shall first be approved by the board. Applications for licenses shall be on forms furnished by the Department of Agriculture and Commerce, and shall show the name and address of the applicant and such other information as to identity, kind and type of business engaged in as the commissioner shall deem pertinent. Each license application shall be accompanied by a fee of Fifty Dollars ($50.00). All licenses issued shall expire on June 30 each year. The license may be revoked or suspended by the board for violation of any provision of this article or rules and regulations duly promulgated by the board for the enforcement of this article, or for the violation of any laws of the State of Mississippi pertaining to producing, grading, classifying or marketing eggs in Mississippi or regulations of the State Department of Agriculture and Commerce duly promulgated for such purposes. For the first offense, the license may be suspended for a period of not more than thirty (30) days; for the second offense, the license may be suspended for not more than sixty (60) days; for the third offense, the license may be suspended for not more than one (1) year. For any subsequent offense, the license may be suspended for any period, or may be revoked. Such disciplinary action shall be the result of not less than board action. Any person against whom such disciplinary action has been taken may apply to the board for a hearing in order to show cause why the disciplinary action shall not be taken. Such petition for a hearing shall act as supersedeas of the disciplinary action until such time as the board shall give the applicant an opportunity for a hearing; provided, however, that if such hearing is granted and any continuation or delay is the result of the action of the applicant, the supersedeas shall not continue past the date set by the board for such hearing.

Application for reinstatement of a revoked license may be made upon expiration of the period of revocation or if permanently revoked, then after twelve (12) months from date of said revocation. Each reinstatement application shall be accompanied by a reinstatement fee of Fifty Dollars ($50.00). All licenses shall be valid until suspended or revoked as herein provided or until cancelled by the licensee. Licenses shall not be transferable. Proceeds from the license fees collected under this article shall be transmitted to the State Treasurer for credit to the special fund as provided for elsewhere in this article.

HISTORY: Laws, 1973, ch. 427, § 9; Laws, 1976, ch. 374, § 9; Laws, 1979, ch. 346, § 9; Laws, 1981, ch. 308, § 9; reenacted, Laws, 1983, ch. 314, § 9; reenacted and amended, Laws, 1987, ch. 506, § 9; reenacted, Laws, 1991, ch. 331, § 9; reenacted without change, Laws, 1996, ch. 475, § 9, eff from and after July 1, 1996.

§ 69-7-269. Producers prohibited from distributing eggs on which assessment not paid; payment of assessment by dealer.

No egg producer with over three thousand (3,000) hens nor any egg handler or dealer shall sell or offer for sale any lot of eggs produced, distributed or marketed in Mississippi upon which the assessment imposed herein has not been paid. The assessment imposed herein shall be paid at such time or times as is fixed by the board. In the event such assessment is paid by any dealer who is not a producer, the dealer may bill the producer of such eggs in the amount of the assessment paid by him.

HISTORY: Laws, 1973, ch. 427, § 10; Laws, 1976, ch. 374, § 10; Laws, 1979, ch. 346, § 10; Laws, 1981, ch. 308, § 10; reenacted, Laws, 1983, ch. 314, § 10; reenacted and amended, Laws, 1987, ch. 506, § 10; reenacted, Laws, 1991, ch. 331, § 10; reenacted without change, Laws, 1996, ch. 475, § 10, eff from and after July 1, 1996.

§ 69-7-271. Civil penalties.

Any dealer or handler who fails to file a report or to pay any assessment within the time required by the board shall forfeit to the commissioner a penalty of five percent (5%) of the assessment determined to be due, plus one percent (1%) of such amount for each month of delay or fraction thereof after the first month after such report was required to be filed or such assessment became due. The commissioner, if satisfied that the delay was excusable, may remit all or any part of such penalty. The penalty shall be paid to the commissioner and shall be disposed of by him in the same manner as funds derived from the payment of the assessment imposed herein.

The commissioner shall collect the penalties levied herein, together with the delinquent assessment, by any or all of the following methods:

(a) By voluntary payment by the person liable;

(b) By legal proceedings instituted in a court of competent jurisdiction;

(c) By injunctive relief to enjoin any dealer or handler or other person owing such assessment and/or penalties from operating his business or engaging in business as a dealer or handler of eggs until the delinquent assessment and/or penalties are paid.

HISTORY: Laws, 1973, ch. 427, § 11; Laws, 1976, ch. 374, § 11; Laws, 1979, ch. 346, § 11; Laws, 1981, ch. 308, § 11; reenacted, Laws, 1983, ch. 314, § 11; reenacted, Laws, 1987, ch. 506, § 11; reenacted, Laws, 1991, ch. 331, § 11; reenacted without change, Laws, 1996, ch. 475, § 11, eff from and after July 1, 1996.

§ 69-7-273. Criminal penalties.

Any person required to pay the assessment provided for in this article who refuses to allow full inspection of the premises, or any books, records or other documents relating to the liability of such person for the assessment herein imposed, or who shall hinder or in any way delay or prevent such inspection, or who shall fail or refuse to properly and timely pay all costs incurred by the board or the commissioner in conducting such examinations, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding One Thousand Dollars ($1,000.00), or by imprisonment in the county jail not to exceed one (1) year, or both.

Whoever violates any other provision of this article or any rule or regulation of the board pursuant thereto shall be guilty of a misdemeanor. Upon conviction of a first offense, he shall be punished by a fine not to exceed One Hundred Dollars ($100.00); upon a second offense, a fine not to exceed Five Hundred Dollars ($500.00); and upon a third or subsequent offense, a fine not to exceed One Thousand Dollars ($1,000.00) or by imprisonment in the county jail not to exceed thirty (30) days, or both.

HISTORY: Laws, 1973, ch. 427, § 13; Laws, 1976, ch. 374, § 12; Laws, 1979, ch. 346, § 12; Laws, 1981, ch. 308, § 12; reenacted, Laws, 1983, ch. 314, § 12; reenacted and amended, Laws, 1987, ch. 506, § 12; reenacted Laws, 1991, ch. 331, § 12; reenacted without change, Laws, 1996, ch. 475, § 12, eff from and after July 1, 1996.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 69-7-275. Application.

The provisions of this article shall not apply to any egg producer who has less than three thousand (3,000) laying hens, nor to any eggs produced and also used for hatching purposes, nor eggs produced or purchased for further processing by egg breaking plants.

For the purposes of this article, anyone not the owner of the chickens or eggs who performs the services of caring for the chickens, gathering the eggs and related services for a contractor or employer, and who does not otherwise engage in distribution or sale of such eggs, shall be excepted from the provisions of this article, shall not be considered as a "producer" as defined herein, and shall not be liable for any assessments provided herein.

HISTORY: Laws, 1973, ch. 427, § 12; Laws, 1976, ch. 374, § 13; Laws, 1979, ch. 346, § 13; Laws, 1981, ch. 308, § 13; reenacted, Laws, 1983, ch. 314, § 13; reenacted, Laws, 1987, ch. 506, § 13; reenacted, Laws, 1991, ch. 331, § 13; reenacted without change, Laws, 1996, ch. 475, § 13, eff from and after July 1, 1996.

§ 69-7-277. Repealed.

Repealed by Laws of 1996, ch. 475, § 14, eff from and after July 1, 1996.

§ 69-7-277. [En Laws, 1991, ch. 331, § 15, eff from and after July 1, 1991]

Editor's Notes — Former § 69-7-277 was a repealer for §§ 69-7-251 through 69-7-275. See Editor's note at the beginning of the article.

ARTICLE 7.

EGG MARKETING.

Sec.

69-7-301 through 69-7-319.	Repealed.
69-7-321.	Producers selling own production exempt from article; exemptions under federal "Eggs Products Inspection Act."
69-7-323.	Minimum requirements for eggs offered for sale.
69-7-325.	Weight and size requirements of eggs.
69-7-327.	Egg marketing containers to describe contents.
69-7-329.	Marketing agents; maintenance of egg handling facilities.
69-7-331.	Commissioner of Agriculture and Commerce and his agents authorized to enter premises where eggs are sold.
69-7-333.	Commissioner of Agriculture and Commerce to enforce article.
69-7-335.	Commissioner of Agriculture and Commerce to promulgate regulations.
69-7-337.	Commissioner of Agriculture and Commerce may issue "stop sale order."
69-7-339.	Penalties for violations.

§§ 69-7-301 through 69-7-319. Repealed.

Repealed by Laws of 1972, ch. 532, § 12, eff from and after July 1, 1972.

§ 69-7-301. [Codes, 1942, § 4435-30.19; Laws, 1966, ch. 223, § 9]

§ 69-7-303. [Codes, 1942, § 4435-30.11; Laws, 1966, ch. 233, § 1]

§ 69-7-305. [Codes, 1942, § 4435-30.12; Laws, 1966, ch. 223, § 2]

§ 69-7-307. [Codes, 1942, § 4435-30.13; Laws, 1966, ch. 223, § 3]

§ 69-7-309. [Codes, 1942, § 4435-30.14; Laws, 1966, ch. 223, § 4]

§ 69-7-311. [Codes, 1942, § 4435-30.16; Laws, 1966, ch. 223, § 6]

§ 69-7-313. [Codes, 1942, § 4435-30.17; Laws, 1966, ch. 223, § 7]
§ 69-7-315. [Codes, 1942, § 4435-30.18; Laws, 1966, ch. 223, § 8]
§ 69-7-317. [Codes, 1942, § 4435-30.15; Laws, 1966, ch. 223, § 5]
§ 69-7-319. [Codes, 1942, § 4435-30.20; Laws, 1966, ch. 223, § 10]

Editor's Notes — Former § 69-7-301 exempted producers selling their own production from the provisions of this article. Comparable provisions now appear in § 69-7-321.

Former § 69-7-303 prescribed minimum requirements for eggs offered for sale. Comparable provisions now appear in § 69-7-323.

Former § 69-7-305 related to the weight and size requirements for eggs. Comparable provisions now appear in § 69-7-325.

Former § 69-7-307 required egg marketing containers to describe contents thereof. Comparable provisions now appear in § 69-7-327.

Former § 69-7-309 related to marketing agents, maintenance of egg handling facilities, and the effect of failure to keep facilities in proper working order. Comparable provisions now appear in § 69-7-329.

Former § 69-7-311 authorized the commissioner of agriculture and commerce and his agents to enter premises where eggs were stored. Comparable provisions now appear in § 69-7-331.

Former § 69-7-313 empowered the commissioner of agriculture and commerce to enforce provisions of former §§ 69-7-301 through 69-7-319. For current powers are to enforcement of provisions, see §§ 69-7-333.

Former § 69-7-315 authorized the commissioner of agriculture and commerce to issue regulations. Comparable provisions now appear in § 69-7-335.

Former § 69-7-317 authorized the commissioner of agriculture and commerce to issue "stop sale order." Comparable provisions now appear in § 69-7-337.

Former § 69-7-319 related to penalties for violating provisions of former §§ 69-7-301 through 69-7-317. For current provisions applicable to §§ 69-7-321 et seq., see § 69-7-339.

§ 69-7-321. Producers selling own production exempt from article; exemptions under federal "Eggs Products Inspection Act."

Producers selling eggs of their own production, when offered on their own premises, or selling less than six (6) dozen eggs per week, are exempt from the provisions of this article.

All eggs, egg products, egg handlers and egg producers which are exempt under the provisions of U. S. Public Law 91-597, commonly referred to as the "Egg Products Inspection Act", or the regulations pertaining thereto, shall likewise be exempt from the provisions of this article to the same extent that such eggs, egg products, egg handlers, and egg producers are exempt from said Public Law 91-597 and the regulations pertaining thereto.

The name and address of the producer, packer or distributor shall appear on the container.

HISTORY: Codes, 1942, § 4435-30.39; Laws, 1972, ch. 532, § 9, eff from and after July 1, 1972.

Federal Aspects— United States Public Law 91-597, referred to in this section, is codified generally at 21 USCS §§ 1031.

§ 69-7-323. Minimum requirements for eggs offered for sale.

No person, firm, organization or corporation shall sell, offer for sale, or advertise for sale shell eggs that do not meet the minimum requirements for U. S. Consumer Grade AA, Grade A, or Grade B. Any change in the U. S. standards of quality for individual eggs made by the U. S. Department of Agriculture not conforming to the above designated standards shall be adopted in lieu of the above designated standards.

HISTORY: Codes, 1942, § 4435-30.31; Laws, 1972, ch. 532, § 1, eff from and after July 1, 1972.

§ 69-7-325. Weight and size requirements of eggs.

The net weight and size requirements that are now or may hereafter be established by the U. S. Department of Agriculture for shell eggs shall apply to all eggs sold, offered for sale or advertised for sale by any person, firm, organization or corporation. The grade and size shall appear in all advertisements.

HISTORY: Codes, 1942, § 4435-30.32; Laws, 1972, ch. 532, § 2, eff from and after July 1, 1972.

§ 69-7-327. Egg marketing containers to describe contents.

Any container or subcontainer in which eggs are marketed to consumers shall bear on the outside portion of the container, but shall not be limited to, the following:

(a) The applicable consumer grade provided for in this article.

(b) The applicable size or weight class provided for in this article.

(c) The word "eggs."

(d) The numerical count of the contents.

(e) The name and address of the producer, packer or distributor.

(f) The date the eggs were graded applied legibly to the carton or on the tape used to seal the carton. Such date shall be expressed as the consecutive day of the year.

(g) The words "keep refrigerated" or words of similar meaning.

Words and numerals used to designate the grade and size shall be in clearly legible bold-faced type at least three-eighths (3/8) inch in height.

Any person intending to reuse a carton shall obscure any inappropriate labeling thereon and relabel the carton in accordance with this section prior to refilling the carton with eggs.

HISTORY: Codes, 1942, § 4435-30.33; Laws, 1972, ch. 532, § 3; Laws, 2000, ch. 371, § 1, eff from and after July 1, 2000.

§ 69-7-329. Marketing agents; maintenance of egg handling facilities.

Any person, business, cooperative, partnership, corporation or the like engaged in the marketing, processing, transporting, storing, displaying for sale or selling of eggs shall, in addition to maintaining all such egg handling facilities in a manner commensurate with laws governing food establishments, keep the eggs at an ambient temperature no greater than forty-five (45) degrees Fahrenheit.

HISTORY: Codes, 1942, § 4435-30.34; Laws, 1972, ch. 532, § 4; Laws, 2000, ch. 371, § 2, eff from and after July 1, 2000.

§ 69-7-331. Commissioner of Agriculture and Commerce and his agents authorized to enter premises where eggs are sold.

In carrying out the provisions of this article, the Commissioner of Agriculture and Commerce, his employees or agents are authorized to enter, on any business day, during the usual hours of business, any store, market or any other building or place where eggs are sold or offered for sale and to make such examination as is necessary to determine the quality and size of eggs sold or offered for sale.

HISTORY: Codes, 1942, § 4435-30.36; Laws, 1972, ch. 532, § 6, eff from and after July 1, 1972.

§ 69-7-333. Commissioner of Agriculture and Commerce to enforce article.

The powers of enforcement of this article shall be vested in the Commissioner of Agriculture and Commerce of the State of Mississippi.

HISTORY: Codes, 1942, § 4435-30.37; Laws, 1972, ch. 532, § 7, eff from and after July 1, 1972.

Cross References — Duties of commissioner of agriculture and commerce generally, see § 69-1-13.

§ 69-7-335. Commissioner of Agriculture and Commerce to promulgate regulations.

The Commissioner of Agriculture and Commerce of Mississippi is authorized to make and promulgate such regulations as may be necessary to carry out the provisions of this article.

HISTORY: Codes, 1942, § 4435-30.38; Laws, 1972, ch. 532, § 8, eff from and after July 1, 1972.

Cross References — Duties of commissioner of agriculture and commerce generally, see § 69-1-13.

§ 69-7-337. Commissioner of Agriculture and Commerce may issue "stop sale order."

If an authorized representative of the Commissioner of Agriculture and

Commerce shall determine, after inspection, that any lot of eggs is in violation of this article, he may issue a "stop sale order" as to such lot or lots of eggs and forthwith notify the owner or custodian of such eggs. Such order shall specify the reason for its issuance. A stop sale order shall prohibit the further marketing of the eggs subject to it until such eggs are released by the Commissioner of Agriculture and Commerce or his duly authorized agent.

HISTORY: Codes, 1942, § 4435-30.35; Laws, 1972, ch. 532, § 5, eff from and after July 1, 1972.

§ 69-7-339. Penalties for violations.

Every person, firm, corporation or organization who by himself or itself, or by his or its agents or employees violates any of the provisions of this article, or the regulations made under this article for carrying out its provisions, or who fails or refuses to comply with any of the requirements of this article, or who willfully interferes with the Commissioner of Agriculture and Commerce, his employees or agents in the carrying out of his duties prescribed in this article, shall for each offense be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding Twenty-five Dollars ($25.00) nor less than Five Dollars ($5.00) for the first offense, not exceeding Fifty Dollars ($50.00) nor less than Twenty-five Dollars ($25.00) for the second, nor exceeding Two Hundred Dollars ($200.00) nor less than One Hundred Dollars ($100.00) for the third and all following offenses, and all costs for each and every offense.

HISTORY: Codes, 1942, § 4435-30.40; Laws, 1972, ch. 532, § 10, eff from and after July 1, 1972.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ARTICLE 9.

VEGETABLE MARKETING.

Sec.	
69-7-401.	Marketing committee and districts.
69-7-403.	Additional districts and committee.
69-7-405.	Regulation of marketing.
69-7-407.	Commissioner of Agriculture and Commerce to enforce regulations.
69-7-409.	Penalties.

§ 69-7-401. Marketing committee and districts.

A committee is hereby created to consist of seven members, four of whom shall be producers of vegetables and three of whom shall be handlers of vegetables, to be nominated and appointed as herein provided, from the following described districts:

(a) District No. 1 shall be composed of Beat No. 5 of Copiah County and all of Simpson County and shall be represented by two producers and one handler.

(b) District No. 2 shall be composed of Beats No. 1, No. 2 and No. 3 of Copiah County and all of the counties of Jefferson, Lincoln and Lawrence, and shall be represented by one producer and one handler.

(c) District No. 3 shall be composed of Beat No. 4 of Copiah County and all of the counties of Hinds, Rankin and Claiborne, and shall be represented by one producer and one handler.

On or before March fifteenth of each year, the committee then serving shall call meetings and select a committee as herein authorized, the members of which shall serve for a period of one year beginning April first of each year, or until their successors have been appointed. A vacancy from any cause shall be filled in the same manner. Members shall serve without compensation.

HISTORY: Codes, 1942, § 4526; Laws, 1940, ch. 312.

Cross References — Agricultural exemptions from sales tax, see § 27-65-103.

RESEARCH REFERENCES

Am. Jur.

18 Am. Jur. 2d, Cooperative Associations §§ 21 et seq.

§ 69-7-403. Additional districts and committee.

A committee is hereby created to consist of nine members, six of whom shall be producers of fruits or vegetables and three of whom shall be handlers of fruits or vegetables, to be nominated and appointed as herein provided, from the following described districts:

(a) District No. 1 shall be composed of Lamar County and shall be represented by one producer.

(b) District No. 2 shall be composed of Stone County and shall be represented by one producer.

(c) District No. 3 shall be composed of Perry County and shall be represented by one producer.

(d) District No. 4 shall be composed of Jefferson Davis County and shall be represented by one producer.

(e) District No. 5 shall be composed of Covington County and shall be represented by one producer.

(f) District No. 6 shall be composed of a combination of all of the above named counties, and shall be represented by four handlers selected from the counties at large.

Committee members provided for in this section shall be chosen at meetings of growers or shippers held prior to March 15th of each year, such meetings to be called by the committee then serving. Members shall serve for a period of one year beginning April 1st, each year and shall serve without compensation. Any vacancy shall be filled in the same manner as the selection of a member.

HISTORY: Codes, 1942, § 4531; Laws, 1942, ch. 256.

§ 69-7-405. Regulation of marketing.

Whenever either the committee created by Section 69-7-401 or the committee created by Section 69-7-403 deems it advisable to regulate the marketing of fresh vegetables in any manner considered by them to be helpful to the industry during any specified period, it may so recommend in writing to the commissioner of agriculture and commerce. At the time of submitting such recommendations the committee shall furnish to the commissioner of agriculture and commerce all pertinent data and information upon which it acted in making such recommendations, along with such other data and information as the commissioner of agriculture and commerce may request.

Based upon the recommendation of the committee created for the districts under consideration and upon the information submitted in connection therewith, and upon other available data, the commissioner of agriculture and commerce may regulate the marketing of fresh vegetables produced in the area defined by this article, for any specified period, by regulating the handling of any vegetable produced in the districts defined in Section 69-7-401 or Section 69-7-403 in one or more of the following manners:

(a) By prohibiting unfair methods of competition and unfair trade practices in the purchase or sale thereof.

(b) By limiting the grade, size, and maturity of any vegetable which each handler may purchase from or handle on behalf of any and all producers thereof during any specified period or periods.

(c) Providing that any vegetable or any grade, size or quality thereof shall be purchased or sold or offered for sale by the handlers thereof only at prices filed by such handlers in the manner provided in such regulation.

(d) Providing for the regulating of the handling of any vegetable in the same manner and for the same period in effect under any federal marketing agreement.

(e) Specifying standard containers which may be used in the purchase or sale of any vegetables.

(f) Requiring that all containers used in the sale of any vegetable shall be plainly marked with the grade and size of the contents therein.

(g) With respect to the districts defined in Section 69-7-401, in order to provide proper maturity requiring that no vegetable may be sold prior to a date fixed in the regulation without permission from the commissioner of agriculture and commerce.

(h) With respect to the districts defined in Section 69-7-403, in order to provide proper maturity requiring that no vegetable may be sold prior to a date fixed in the regulation.

The commissioner of agriculture and commerce shall immediately make publication for the issuance of any such regulations.

HISTORY: Codes, 1942, §§ 4527, 4532; Laws, 1940, ch. 312; Laws, 1942, ch. 256.

Cross References — Duties of commissioner, generally, see § 69-1-13.

Authority of commissioner of agriculture to establish grades and standards of farm products, see § 69-1-19.

Agricultural districts, see § 69-7-403.

RESEARCH REFERENCES

ALR.

Validity and construction of provision for liquidated damages in contract with co-operative marketing association. 12 A.L.R.2d 130.

Am. Jur.

52 Am. Jur. 2d, Markets and Marketing §§ 33 et seq.

§ 69-7-407. Commissioner of Agriculture and Commerce to enforce regulations.

The Commissioner of Agriculture and Commerce shall have authority and police power to enforce any and all regulations issued pursuant thereto.

HISTORY: Codes, 1942, §§ 4528, 4533; Laws, 1940, ch. 312; Laws, 1942, ch. 256.

Cross References — Duties of commissioner, generally, see § 69-1-13.

§ 69-7-409. Penalties.

Every person, who by themselves, their agents or employees, violates any of the provisions of this article or any regulations issued under the provisions of this article shall for each offense be deemed guilty of a misdemeanor, and shall upon conviction thereof, be punished by a fine not exceeding $25.00, nor less than $5.00 or 30 days in jail for the first offense; not exceeding $50.00 nor less than $40.00 or 60 days in jail for the second offense; not exceeding $200.00 nor less than $100.00 or 90 days in jail or both for the third and all following offenses, and all costs for each and every offense.

HISTORY: Codes, 1942, §§ 4529, 4534; Laws, 1940, ch. 312; Laws, 1942, ch. 256.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ARTICLE 11.

DOMESTIC FISH FARMING.

Sec.
69-7-501. Definitions.
69-7-503. Construction of article.

§ 69-7-501. Definitions.

In recognition of the fact that domestic fish farming has become an important part of the agricultural economy of this state, the Legislature hereby determines and declares that whenever any of the statutes, laws, or regulations promulgated pursuant thereto, shall use any of the following terms, such terms so used and when used, shall be deemed and construed to include within the common or statutory definition thereof, the following:

(a) The term "agriculture" or "agricultural pursuit" or any similar term shall include the cultivation, growing, harvesting and/or marketing of domesticated fish.

(b) The term "cultivated crop" shall include domesticated fish which are grown, managed or harvested on an annual, semiannual, biennial or short interval basis.

(c) The term "livestock" shall include domesticated fish which are grown, managed, harvested and/or marketed as a cultivated crop.

(d) The term "domesticated fish" shall be understood to mean any fish that are spawned and grown, managed, harvested and marketed on an annual, semiannual, biennial or short term basis, in privately owned waters.

HISTORY: Codes, 1942, § 4435-91; Laws, 1964, ch. 235, §§ 1, 2, eff from and after passage (approved June 11, 1964).

Cross References — Tax on sales of aerators to domestic fish farmers, see § 27-65-17.

Cooperative aquatic products marketing associations, see §§ 79-21-1 et seq.

Mississippi Aquaculture Act of 1988, see §§ 79-22-1 et seq.

§ 69-7-503. Construction of article.

This article shall not be construed to permit the sale of any fish prohibited from being sold by law, but shall be supplementary thereto.

HISTORY: Codes, 1942, § 4435-91; Laws, 1964, ch. 235, §§ 1, 2, eff from and after passage (approved June 11, 1964).

ARTICLE 13.

CATFISH MARKETING.

Sec.

69-7-601. Short title.
69-7-602. Legislative findings.
69-7-603. Administration.
69-7-605. Definitions.
69-7-607. Labeling of catfish and fish products; notice of country of origin; method of notification; record-keeping audit trail; commissioner authorized to inspect businesses for compliance; exceptions.
69-7-608. Misrepresentation in use of term "catfish"; regulation and inspection of retail and food service establishments; notice of violation; penalties.
69-7-609. Information as to origin of catfish products.
69-7-610. Identification by distributors, processors and wholesalers of catfish types upon request of commissioner; public disclosure of purchasers of catfish from distributors, processors and wholesalers.

Sec.
69-7-611. Promulgation of rules and regulations.
69-7-612. Commissioner authorized to enter premises to take samples for testing to determine compliance.
69-7-613. Penalties; injunctive relief.
69-7-614. Repealed.
69-7-615. Cooperation.
69-7-616. Administrative proceedings; sanctions; appeals; danger to public health.
69-7-617. Information concerning production and sales of catfish products.
69-7-619. Repealed.

§ 69-7-601. Short title.

This article shall be known as the "Mississippi Catfish Marketing Law of 1975."

HISTORY: Laws, 1975, ch. 308, § 1; reenacted without change, Laws, 2010, ch. 304, § 1, eff from and after passage (approved Feb. 17, 2010).

Cross References — Mississippi Catfish Processor Fair Practices Act, see §§ 69-7-651 et seq.

Requirement that catfish processors use certain weighing device for weighing farm-raised catfish, see § 69-7-701.

Mississippi Aquaculture Act of 1988, see §§ 79-22-1 et seq.

Federal Aspects— National Aquaculture Act of 1980, see 16 USCS §§ 2801 et seq.

§ 69-7-602. Legislative findings.

The Legislature finds that aquaculture sales and consumption have increased worldwide and that the use of antibiotics or chemicals not approved for use in food-producing animals in the United States is permitted in aquaculture in other countries and that consumers of aquaculture in Mississippi should be provided clear information as to where the aquaculture product originates from to protect the health and welfare of Mississippi consumers; and the Legislature also finds that food-misrepresentation or the passing off of less expensive aquaculture products as pricier aquaculture products to unknowing customers and retailers has become an issue in the marketplace and is a deceitful practice used on consumers and retailers alike and that consumers and retailers should be informed of the country and species of fish.

HISTORY: Laws, 2008, ch. 449, § 1; reenacted without change, Laws, 2010, ch. 304, § 2, eff from and after passage (approved Feb. 17, 2010).

§ 69-7-603. Administration.

This article shall be administered by the Commissioner of Agriculture and Commerce.

HISTORY: Laws, 1975, ch. 308, § 2, eff 180 days from and after passage (approved February 14, 1975); reenacted without change, Laws, 2010, ch. 304, § 3, eff from and after passage (approved Feb. 17, 2010).

§ 69-7-605. Definitions.

For purposes of this article, the following terms shall have the meaning ascribed herein unless the context otherwise requires:

(a) "Capable of use as human food" means and shall apply to any catfish or part or product thereof unless it is denatured or otherwise identified as required by regulations prescribed by the commissioner to deter its use as human food, or unless it is naturally inedible by humans.

(b) "Catfish" means any species within the family Ictaluridae.

(c) "Commissioner" means the Commissioner of Agriculture and Commerce of the State of Mississippi.

(d) "Direct retail sale" means the sale of catfish products individually or in small quantities directly to the consumer.

(e) "Distributor" means any person offering for sale, exchange or barter any catfish product destined for direct retail sale in the State of Mississippi.

(f) "Farm-raised Catfish" means the catfish product has been specifically produced in fresh water according to the usual and customary techniques of commercial aquaculture and includes fillets, steaks, nuggets and any other flesh from a "Farm-raised Catfish."

(g) "Fish" means species of fish similar to catfish in the families of Siluridae, Clariidae and Pangasiidae.

(h) "Food service establishment" means a restaurant, cafeteria, lunch room, food stand, saloon, tavern, bar, lounge or other similar facility operated as an enterprise engaged in the business of selling food to the public.

(i) "Label" means a display of written, printed or graphic matter upon or affixed to the container in which a catfish product is offered for direct retail sale.

(j) "Labeling" means all labels and other written, printed or graphic matter upon a catfish product, or any of its containers or wrappers, offered for direct retail sale.

(k) "Menu" means any listing of food and beverage options for a diner or customer to select from regardless of its form.

(*l*) "Pay pond" means a circumscribed body of water owned by a person and operated solely for recreational fishing purposes on a commercial basis for profit.

(m) "Person" includes any individual, partnership, corporation and association or other legal entity.

(n) "Processor" means any person engaged in handling, storing, preparing, manufacturing, packing or holding catfish products.

(o) "Producer" means any person engaged in the business of harvesting catfish, by any method, intended for direct retail sale.

(p) "Product" means any catfish product capable of use as human food which is made wholly or in part from any catfish or portion thereof, except products which contain catfish only in small proportions or historically have not been, in the judgment of the commissioner, considered by consumers as products of the United States commercial catfish industry and which are exempted from definition as a catfish product by the commissioner under such conditions as he may prescribe to assure that the catfish or portions thereof contained therein are not adulterated and that such products are not represented as catfish products.

(q) "Product name" means the name of the catfish item intended for retail sale which identifies it as to kind, class or specific use.

(r) "Retailer" means any person offering for sale catfish products to individual consumers and representing the last sale prior to human consumption and includes food service establishments unless otherwise stated herein.

(s) "River or Lake Catfish" means the catfish product has been produced in a freshwater lake, river or stream but has not been produced according to the usual and customary techniques of commercial aquaculture.

(t) "Wholesaler" means any person offering for sale any catfish product destined for direct retail sale in the State of Mississippi.

HISTORY: Laws, 1975, ch. 308, § 3, eff 180 days from and after passage (approved February 14, 1975); Laws, 2002, ch. 506, § 1; Laws, 2004, ch. 377, § 1; Laws, 2008, ch. 449, § 2; reenacted without change, Laws, 2010, ch. 304, § 4, eff from and after passage (approved Feb. 17, 2010).

Cross References — Mississippi Catfish Processor Fair Practices Act, see §§ 69-7-651 et seq.

§ 69-7-607. Labeling of catfish and fish products; notice of country of origin; method of notification; record-keeping audit trail; commissioner authorized to inspect businesses for compliance; exceptions.

(1) Notice of country of origin.

(a) General requirements:

(i) All retailers of catfish and fish products, as defined in Section 69-7-605, shall inform consumers, at the final point of sale of the catfish or fish to the consumers, of the country of origin of the catfish or fish;

(ii) United States country of origin. A retailer of catfish or fish products may designate the catfish or fish as having a United States country of origin only if:

1. In case of "Farm-raised Catfish or Farm-raised Fish," it is hatched, raised, harvested and processed in the United States;

2. In case of "River or Lake Catfish or River or Lake Fish," it is:

a. Harvested in waters of the United States, a territory of the United States or a state, including the waters thereof; and

b. Processed in the United States, a territory of the United States or a state, including the waters thereof;

(iii) Farm-raised and River or Lake Catfish, Farm-raised and River or Lake Fish. The notice of country of origin for "Farm-raised Catfish," or "Farm-raised Fish," and "River or Lake Catfish" or "River or Lake Fish" shall distinguish between "Farm-raised Catfish" and "River or Lake Catfish" or "Farm-raised Fish" and "River or Lake Fish."

(b) Method of notification.

(i) Retailers.

1. The information required by paragraph (a) of this subsection (1) may be provided to consumers by means of a label, stamp, mark, placard or other clear and visible sign on the catfish or fish or on the package, display, holding unit or bin containing the catfish or fish at the final point of sale to consumers.

2. If the catfish or fish is already individually labeled for retail sale regarding country of origin, the retailer shall not be required to provide any additional information to comply with this section.

(ii) Food service establishments. The information required by paragraph (a) of this subsection (1) of this section shall be provided to the consumer on the menu of the food service establishment. For foreign or imported catfish or fish, the information shall be adjacent to the item on the menu and printed in the same font style and size as the item. If the food service establishment offers for sale only catfish or fish having a United States country of origin, then the food service establishment may generally disclose this in a prominent location in the food service establishment in lieu of disclosure on the menu. The signage disclosing the sale of catfish or fish having a United States country of origin, that is to be placed in a prominent location in the food service establishment, shall be approved by the Mississippi Department of Agriculture and Commerce, which shall be held harmless in a cause of action for a retail or food service establishment's failure to disclose or fraudulent disclosure. Any liability arising from failure to disclose country of origin shall remain with the wholesaler and the retail or food service establishment.

(c) The commissioner may require that any person that prepares, stores, handles or distributes catfish or fish for retail sale maintain a verifiable record-keeping audit trail that permits the commissioner to verify compliance with this law and any regulations promulgated hereunder.

(d) Any distributor or wholesaler engaged in the business of supplying catfish or fish to a retailer or food service establishment shall provide information to the retailer or food service establishment indicating the country of origin of the catfish or fish. The information shall include certification of origin through a state or federal agency that regulates the processing of catfish or fish or through a federal agency that verifies that catfish or fish and/or other products produced in countries other than the United States meets similar sanitation requirements.

(2) Any advertising as to any catfish or fish product shall state the information required in paragraph (a) of this subsection (1) of this section.

(3) The term "catfish" shall not be used as a common name or in the label name of fish product except as provided in this section.

(4) The commissioner shall have authority to enter the premises of any wholesaler, processor, distributor, retailer or any other person selling catfish or fish products in order to determine compliance with this article.

(5) This section shall not apply to catfish or fish products exported out of the United States.

HISTORY: Laws, 1975, ch. 308, § 4, eff 180 days from and after passage (approved February 14, 1975); Laws, 2002, ch. 506, § 2; Laws, 2004, ch. 377, § 2; Laws, 2008, ch. 449, § 3; reenacted without change, Laws, 2010, ch. 304, § 5; Laws, 2013, ch. 371, § 1, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (1)(b)(ii), inserting the words "to disclose" after the word "failure" so that "food service establishment's failure or fraudulent disclosure" will read as "food service establishment's failure to disclose or fraudulent disclosure," in the next-to-last sentence. The Joint Committee ratified the correction at its August 5, 2008, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in internal references in (1)(b)(i)1 and (1)(b)(ii) by substituting "paragraph (a) of this subsection (1)" for "paragraph (a) of subsection (1)." The Joint Committee ratified the correction at its August 20, 2021, meeting.

Cross References — Mississippi Aquaculture Act of 1988, see §§ 79-22-1 et seq.

§ 69-7-608. Misrepresentation in use of term "catfish"; regulation and inspection of retail and food service establishments; notice of violation; penalties.

(1) The term "catfish" shall not be used as a common name or used to advertise, distribute or label any fish or fish product except for those species within the definition of catfish in Section 69-7-605.

(2) It is unlawful to use the term "catfish" in the advertising, distributing, labeling or selling of any of those species within the family of Siluridae, Clariidae and Pangasiidae or any other fish not within the definition of catfish in Section 69-7-605.

(3)(a) The commissioner shall regulate and inspect retail and food service establishments under this article.

(b) The commissioner shall notify, in writing, any retailer or food service establishment violating this article and shall give the retailer or food service establishment three (3) days to correct the violation. No penalties under this article shall apply to any retailer or food service establishment that corrects the violation within three (3) days from the date notified by the commissioner.

(4) In addition to any other civil or criminal penalties, any person who violates any of the provisions of this chapter or who otherwise misrepresents as catfish any fish or fish product not defined as catfish under this article shall be punished by a fine of not more than One Thousand Dollars ($1,000.00). For a second offense, a person shall be punished by a fine of not more than Two Thousand Dollars ($2,000.00). For any subsequent violations, a person shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by having the license for the retail or food establishment suspended indefinitely or until such establishment has corrected the violation, or both. Any person

against whom a complaint is made or who has been made subject to a fine or license suspension as provided by this subsection, may avail themselves of a due process administrative hearing as provided by Section 69-7-616.

HISTORY: Laws, 2002, ch. 506, § 3; Laws, 2008, ch. 449, § 4; reenacted without change, Laws, 2010, ch. 304, § 6, eff from and after passage (approved Feb. 17, 2010).

Cross References — Notice requirements regarding country of origin of catfish and catfish products, see § 69-7-607.

§ 69-7-609. Information as to origin of catfish products.

All distributors, processors or wholesalers of catfish products, distributing or selling catfish products, shall provide information to each person, firm or corporation to whom they distribute or sell catfish products for resale as to the labeling information required in subsection (1) of Section 69-7-607.

HISTORY: Laws, 1975, ch. 308, § 5; Laws, 2004, ch. 377, § 3; Laws, 2008, ch. 449, § 5; reenacted without change, Laws, 2010, ch. 304, § 7, eff from and after passage (approved Feb. 17, 2010).

§ 69-7-610. Identification by distributors, processors and wholesalers of catfish types upon request of commissioner; public disclosure of purchasers of catfish from distributors, processors and wholesalers.

(1) All distributors, processors or wholesalers of catfish or other fish products, distributing or selling catfish or other fish products, shall provide information to the commissioner or his representative, upon request, and to each retailer to which such distributor, processor or wholesaler distributes or sells catfish or other fish products as to whether such product is Farm-raised Catfish, River or Lake Catfish, Imported Catfish, or Other Fish a Product of (country of origin). In addition, any wholesaler or distributor shall provide his sales and purchases records of catfish and other fish upon request by the commissioner. Other fish includes those fish in the taxonomic family of Siluridae, Clariidae and Pangasiidae.

(2) The commissioner may disclose to the public the names and addresses of businesses that purchase domestic and/or foreign catfish and other fish from wholesalers, distributors and processors.

HISTORY: Laws, 2002, ch. 506, § 4; Laws, 2004, ch. 377, § 4; Laws, 2008, ch. 449, § 6; reenacted without change, Laws, 2010, ch. 304, § 8, eff from and after passage (approved Feb. 17, 2010).

§ 69-7-611. Promulgation of rules and regulations.

(1) The commissioner is authorized to promulgate such rules and regulations such as may be necessary for the efficient enforcement of this article.

(2) Before the issuance, amendment, or repeal of any rule or regulation authorized by this article, the commissioner shall publish the proposed regulation, amendment, or notice to repeal an existing regulation in a manner reasonably calculated to give interested parties adequate notice and shall afford all interested persons an opportunity to present their views thereon, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the commissioner shall take appropriate action to issue the proposed rules or regulations or to amend or repeal an existing rule or regulation.

HISTORY: Laws, 1975, ch. 308, § 6, eff 180 days from and after passage (approved February 14, 1975); reenacted without change, Laws, 2010, ch. 304, § 9, eff from and after passage (approved Feb. 17, 2010).

Cross References — Mississippi Catfish Processor Fair Practices Act, see §§ 69-7-651 et seq.

§ 69-7-612. Commissioner authorized to enter premises to take samples for testing to determine compliance.

The commissioner shall have authority to enter the premises of any wholesaler, distributor or retailer to pull samples of catfish and other similar fish for laboratory testing to test for species identification and/or any other testing as may be necessary to determine compliance with this article.

HISTORY: Laws, 2008, ch. 449, § 7; reenacted without change, Laws, 2010, ch. 304, § 10, eff from and after passage (approved Feb. 17, 2010).

§ 69-7-613. Penalties; injunctive relief.

(1) Any person who violates any provision of this article for which no other penalty is provided by this article shall upon conviction be subject to a fine of not more than Five Hundred Dollars ($500.00).

(2) The commissioner may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule or regulation promulgated under this article, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

HISTORY: Laws, 1975, ch. 308, § 7, eff 180 days from and after passage (approved February 14, 1975); Laws, 2002, ch. 506, § 5; reenacted without change, Laws, 2010, ch. 304, § 11, eff from and after passage (approved Feb. 17, 2010).

Cross References — Mississippi Catfish Processor Fair Practices Act, see §§ 69-7-651 et seq.

RESEARCH REFERENCES

Am. Jur.
8 Am. Jur. Pl & Pr Forms (Rev), Declaratory Judgments, Form 4.1 (complaint, petition, or declaration for judgment declaring statute or ordinance unconstitutional).

§ 69-7-614. Repealed.

Repealed by operation of law on July 1, 2004, by Laws, 2002, ch. 506, § 6.

§ 69-7-614. [Laws, 2002, ch. 506, § 6, eff from and after passage (approved Apr. 1, 2002).]

Editor's Notes — Former § 69-7-614 was entitled "Records required."

§ 69-7-615. Cooperation.

The commissioner may cooperate with and enter into agreements with governmental agencies of this state, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this article.

HISTORY: Laws, 1975, ch. 308, § 8, eff 180 days from and after passage (approved February 14, 1975); reenacted without change, Laws, 2010, ch. 304, § 12, eff from and after passage (approved Feb. 17, 2010).

§ 69-7-616. Administrative proceedings; sanctions; appeals; danger to public health.

(1) When a complaint is made against a person for violation of any of the provisions of this article, or any of the rules or regulations promulgated hereunder, the Director of the Regulatory Division of the Mississippi Department of Agriculture and Commerce, or his designee, shall act as reviewing officer. The complaint shall be filed with the Mississippi Department of Agriculture and Commerce. The reviewing officer shall cause to be delivered to the accused, in the manner described herein, a copy of the complaint and any supporting documents along with a summons requiring the accused to respond to the allegations within thirty (30) days after service of the summons and complaint upon the accused. The accused shall file with the department a written response to the complaint and any supporting documents within the thirty-day period. The accused may be notified by serving a copy of the summons and complaint on the accused or any of his officers, agents or employees by personal service or by certified mail. Upon the expiration of the thirty-day period, the reviewing officer shall review the complaint, the written response of the accused, if any, and all supporting documents offered by the parties in support of their respective positions. The reviewing officer's decision shall be based solely on the documents provided by the parties. If the reviewing officer determines that the complaint lacks merit, he may dismiss the complaint. If he finds that there are reasonable grounds showing that a violation of the statutes or regulations has been committed, he may impose any or all of

the following penalties upon the accused: (a) levy a civil penalty in the amount of no more than One Thousand Dollars ($1,000.00) for each violation; (b) issue a stop-sale order; (c) require the accused to relabel any fish that he is offering for sale and which is not labeled in accordance with the provisions of this article; or (d) seize any fish that is not in compliance with this article, and destroy, sell or otherwise dispose of the fish, and apply the proceeds of any such sale to the costs herein and any civil penalties levied, with the balance to be paid to the accused. The reviewing officer's decision shall be in writing, and it shall be delivered to the accused by any of the methods described herein for service of the summons and complaint on the accused.

(2) Either the accused or the department may appeal the decision of the reviewing officer to the Commissioner of Agriculture and Commerce by filing a notice of appeal with the department within thirty (30) days of receipt of the reviewing officer's decision. If no appeal is taken from the order of the reviewing officer within the allotted time, the order shall then become final. In the event of an appeal, the commissioner, or his designee, shall conduct a full evidentiary hearing relative to the charges. The commissioner may issue subpoenas to require the attendance of witnesses and the production of documents. Compliance with such subpoenas may be enforced by any court of general jurisdiction in this state. The testimony of witnesses shall be upon oath or affirmation, and they shall be subject to cross-examination. The proceedings shall be recorded by a court reporter. The commissioner shall have all the powers of the reviewing officer described herein, and the commissioner may affirm, reverse or modify the order of the reviewing officer. The commissioner's decision shall be in writing, and it shall be delivered to the parties in the same manner that the summons and complaint may be served upon the accused.

(3) Either the accused or the department may appeal the decision of the commissioner to the circuit court of the county of residence of the accused, or if the accused is a nonresident of the State of Mississippi, to the Circuit Court of the First Judicial District of Hinds County, Mississippi. The appellant has the obligation of having the record transcribed and filed with the circuit court. The appeal shall otherwise be governed by all applicable laws and rules affecting appeals to the circuit court. If no appeal is perfected within the required time, the decision of the commissioner, or his designee, shall then become final.

(4) The decision of the circuit court may then be appealed by either party to the Mississippi Supreme Court in accordance with the existing laws and rules affecting such appeals.

(5) Where any violation of this article, or the rules and regulations promulgated hereunder, occurs, or is about to occur, that presents a clear and present danger to the public health, safety or welfare requiring immediate action, any of the department's field inspectors and any other persons authorized by the commissioner, may issue an order to be effective immediately, before notice and a hearing, that imposes any or all of the penalties described herein against the accused. The order shall be served upon the accused in the same manner that the summons and complaint may be served upon him. The

accused shall then have thirty (30) days after service of the order upon him within which to request an informal administrative review before the reviewing officer, or his designee, as described herein. The accused shall include within his request all documents that support his position. The department may also submit any documents that support its position. If the accused makes such a request within such time, the reviewing officer, or his designee, shall review the documents provided by the parties and render a written decision within thirty (30) days after such request is made. Upon the making of such a request, the procedure described herein shall be followed, except that there is no need for a complaint to be filed against the accused. If the accused does not request an administrative review within such time frame, then he shall have waived his right to an administrative review.

HISTORY: Laws, 2002, ch. 506, § 7; reenacted without change, Laws, 2010, ch. 304, § 13, eff from and after passage (approved Feb. 17, 2010).

§ 69-7-617. Information concerning production and sales of catfish products.

The commissioner shall publish at least biannually, in such form as he may deem proper, information concerning the sale of catfish products, together with such data on their production and use as he may consider advisable provided that the information concerning production and sales of catfish products shall not disclose the operation of any person.

HISTORY: Laws, 1975, ch. 308, § 9, eff 180 days from and after passage (approved February 14, 1975); reenacted without change, Laws, 2010, ch. 304, § 14, eff from and after passage (approved Feb. 17, 2010).

Cross References — Mississippi Catfish Processor Fair Practices Act, see §§ 69-7-651 et seq.

Mississippi Aquaculture Act of 1988, see §§ 79-22-1 et seq.

§ 69-7-619. Repealed.

Repealed by Laws of 2010, ch. 304, § 15, eff from and after passage (approved Feb. 17, 2010).

§ 69-7-619. [Laws, 2008, ch. 449, § 8, eff July 1, 2008.]

Editor's Notes — Former § 69-7-619 provided for the repeal of §§ 69-7-601 through 69-7-617.

ARTICLE 15.

MISSISSIPPI CATFISH PROCESSOR FAIR PRACTICES ACT.

Sec.	
69-7-651.	Short title.
69-7-653.	Administration of article.

Sec.
69-7-655. Legislative findings and purpose.
69-7-657. Definitions.
69-7-659. Methods of purchasing catfish products; bonds and other security requirements; unfair practices.
69-7-661. Registration of processors; orders with respect to insolvent registrants.
69-7-663. Unlawful practices.
69-7-665. Promulgation of rules and regulations.
69-7-667. Injunctions against violations; judicial review.
69-7-669. Liability of violators; enforcement.

§ 69-7-651. Short title.

This chapter shall be known and may be cited as the "Mississippi Catfish Processor Fair Practices Act of 1986."

HISTORY: Laws, 1986, ch. 431, § 1, eff from and after July 1, 1986.

Cross References — Mississippi Catfish Marketing Law of 1975, see §§ 69-7-601 et seq.

Requirement that catfish processors use certain weighing device for weighing farm-raised catfish, see § 69-7-701.

Mississippi Aquaculture Act of 1988, see §§ 79-22-1 et seq.

Federal Aspects— National Aquaculture Act of 1980, see 16 USCS §§ 2801 et seq.

§ 69-7-653. Administration of article.

This article shall be administered by the Commissioner of Agriculture and Commerce.

HISTORY: Laws, 1986, ch. 431, § 2, eff from and after July 1, 1986.

Cross References — Department of Agriculture and Commerce generally, see §§ 69-1-1 et seq.

§ 69-7-655. Legislative findings and purpose.

The Legislature finds that a burden on and an obstruction to intrastate commerce in the catfish farming industry is caused when payment is not made for the catfish and that such arrangements are contrary to the public interest. This article is intended to remedy such burden on and obstruction to intrastate commerce in catfish and to protect the public interest.

HISTORY: Laws, 1986, ch. 431, § 3, eff from and after July 1, 1986.

Cross References — Mississippi Catfish Marketing Law of 1975, see §§ 69-7-601 et seq.

Federal Aspects— National Aquaculture Act of 1980, see 16 USCS §§ 2801 et seq.

§ 69-7-657. Definitions.

For purposes of this article, the following terms shall have the meaning ascribed herein unless the context otherwise requires:

(a) "Capable of use as human food" means and shall apply to any catfish or part or product thereof unless it is denatured or otherwise identified as required by regulations prescribed by the commissioner to deter its use as human food, or unless it is naturally inedible by humans.

(b) "Cash sale" means a sale in which the seller does not expressly extend credit to the buyer.

(c) "Catfish" means any species within the family of Ictaluridae.

(d) "Commissioner" means the Commissioner of Agriculture and Commerce of the State of Mississippi.

(e) "Direct retail sale" means the sale of catfish products directly to the consumer.

(f) "Person" includes any individual, partnership, corporation and association or other legal entity.

(g) "Processor" means any person engaged in handling, storing, preparing, manufacturing, packing or holding catfish products.

(h) "Producer" means any person engaged in the business of producing catfish, by any method.

(i) "Product" means any catfish product capable of use as human food which is made wholly or in part from any catfish or portion thereof.

(j) "Secured party" means a lender who has a perfected security interest pursuant to the Uniform Commercial Code in the catfish being sold.

HISTORY: Laws, 1986, ch. 431, § 4; Laws, 2004, ch. 377, § 5; Laws, 2005, ch. 390, § 1, eff from and after passage (approved Mar. 16, 2005).

Cross References — Provisions of the Uniform Commercial Code relative to secured transactions, see §§ 75-9-101 et seq.

§ 69-7-659. Methods of purchasing catfish products; bonds and other security requirements; unfair practices.

(1) Each processor shall use one of the following methods to purchase catfish products:

(a) The processor may deliver to the producer or his duly authorized representative and any secured parties the full amount of the purchase price on the same day the catfish product is purchased and possession is transferred.

(b) The processor may before the close of the twenty-eighth (28th) calendar day following the purchase of the catfish products and transfer of possession thereof, deliver to the producer or his duly authorized representative and any secured parties the full amount of the purchase price. If the producer or his duly authorized representative or secured parties are not present to receive payment at the point of transfer or possession, as herein provided, the processor shall wire transfer funds or place a check in the United States mail for the full amount of the purchase price, properly addressed to the producer and any secured parties, within the time limits specified in this subsection. Such action shall be deemed in compliance with the requirement for prompt payment under this paragraph.

(c) The parties to the purchase and sale of catfish products may expressly agree in writing, before such purchase or sale, to effect payment in a manner other than that required in paragraphs (a) or (b) provided the manner of payment does not interfere with the rights of secured parties. Any such agreement shall be disclosed in the records of any producer selling the catfish, and in the processors records and on the accounts or other documents issued by the processors relating to the transaction.

(2) In the event the processor shall elect the method prescribed in subsection (1)(b) of this section, to purchase catfish products, such processor shall, prior to such transaction, be required to:

(a) Be bonded in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00) or in an amount which may be determined by the commissioner;

(b) Post a security bond in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00) or in an amount which may be determined by the commissioner; or

(c) Provide cash security, letters of credit and/or such other evidences of security as shall be authorized by the commissioner.

(3) Any delay or attempt to delay, by a processor purchasing catfish products, the collection of funds as herein provided, or otherwise, for the purpose of or resulting in extending the normal period of payment for such catfish shall be considered an “unfair practice” in violation of this article.

HISTORY: Laws, 1986, ch. 431, § 5, eff from and after July 1, 1986.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in subsection (2) by substituting “subsection (1)(b)” for “subparagraph (1)(b).” The Joint Committee ratified the correction at its August 20, 2021, meeting.

Cross References — Mississippi Catfish Marketing Law of 1975, see §§ 69-7-601 et seq.

Mississippi Aquaculture Act of 1988, see §§ 79-22-1 et seq.

§ 69-7-661. Registration of processors; orders with respect to insolvent registrants.

On and after July 1, 1986, every catfish processor shall register with the Commissioner of Agriculture and Commerce. The commissioner shall promulgate such rules and regulations as he may deem necessary to secure the performance of catfish purchasing obligations, and whenever, after due notice and hearing, the commissioner finds any registrant is insolvent or has violated any provisions of this article he may issue an order suspending such registrant for a reasonable specified period. Such order of suspension shall take effect within not less than five (5) days, unless suspended or modified or set aside by the commissioner or a court of competent jurisdiction. If the commissioner finds any processor is insolvent, he may after notice and hearing issue an order requiring such processor to cease and desist from purchasing catfish while insolvent except under such conditions as the commissioner may prescribe to effectuate the purposes of this article. Provided, however, that (a) those processors whose average annual purchases do not exceed Fifty Thousand Dollars ($50,000.00), and (b) those processors who deliver to the producer or his duly authorized representative the full amount of the purchase price on the same day the catfish product is purchased and possession thereof is transferred, shall be exempt from the provisions of this section.

HISTORY: Laws, 1986, ch. 431, § 6, eff from and after July 1, 1986.

Cross References — Mississippi Aquaculture Act of 1988, see §§ 79-22-1 et seq.

§ 69-7-663. Unlawful practices.

It shall be unlawful, with respect to catfish or catfish products, for any processor to engage in or use any unfair, unjustly discriminatory, or deceptive practice.

HISTORY: Laws, 1986, ch. 431, § 7, eff from and after July 1, 1986.

Cross References — Mississippi Catfish Marketing Law of 1975, see §§ 69-7-601 et seq.

Requirement that catfish processors use certain weighing device for weighing farm-raised catfish, see § 69-7-701.

§ 69-7-665. Promulgation of rules and regulations.

(1) The commissioner is authorized to promulgate such rules and regulations as may be necessary for the efficient enforcement of this article.

(2) Before the issuance, amendment or repeal of any rule or regulation authorized by this article, the commissioner shall publish the proposed regulation, amendment or notice to repeal an existing regulation in a manner reasonably calculated to give interested parties adequate notice and shall afford all interested persons an opportunity to present their views thereon, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the commissioner shall take appropriate action to issue the proposed rules or regulations or to amend or repeal an existing rule or regulation.

HISTORY: Laws, 1986, ch. 431, § 8, eff from and after July 1, 1986.

Cross References — Mississippi Catfish Marketing Law of 1975, see §§ 69-7-601 et seq.

§ 69-7-667. Injunctions against violations; judicial review.

(1) The commissioner is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule or regulation promulgated under this article, notwithstanding the existence of other remedies at law. Said injunction shall be issued without bond.

(2) Any person adversely affected by an act, order or ruling made by the commissioner pursuant to the provisions of this article may, within forty-five (45) days thereafter, bring action in the Hinds County Circuit Court, First Judicial District, for judicial review of such actions. The form of the proceeding shall be any which may be provided by statutes of this state to review decisions of administrative agencies, or in the absence or inadequacy thereof any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunctions.

HISTORY: Laws, 1986, ch. 431, § 9, eff from and after July 1, 1986.

Cross References — Mississippi Catfish Marketing Law of 1975, see §§ 69-7-601 et seq.

§ 69-7-669. Liability of violators; enforcement.

(1) If any person subject to this article violates any of the provisions of this article, or of any order of the commissioner under this article, relating to the purchase, sale or handling of catfish, he shall be liable to the person or person injured thereby for the full amount of damages sustained in consequence of such violation.

(2) Such liability may be enforced either (a) by complaint to the commissioner or (b) by suit in any circuit court of competent jurisdiction; but this section shall not in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this article are in addition to such remedies.

HISTORY: Laws, 1986, ch. 431, § 10, eff from and after July 1, 1986.

Cross References — Mississippi Catfish Marketing Law of 1975, see §§ 69-7-601 et seq.

ARTICLE 17.

WEIGHING DEVICES FOR FARM-RAISED CATFISH.

Sec.
69-7-701. Use of weighing device by catfish processors.

§ 69-7-701. Use of weighing device by catfish processors.

(1) For purposes of this section, the following terms shall have the meaning ascribed herein unless the context otherwise requires:

(a) "Catfish" means any species within the family of Ictaluridae.

(b) "Processor" means any person engaged in handling, storing, preparing, manufacturing, packing or holding catfish products.

(2) When making a weight determination of farm-raised catfish, the processor shall weigh the catfish as they are unloaded from the live haul truck and shall drain any water from the weighing baskets before the catfish are

weighed. No deductions shall be made thereafter for water in the weighing baskets. The processor shall also use a weighing device that is of a type suitable for the weighing of farm-raised catfish and subject to the provisions of Section 75-27-19, Mississippi Code of 1972.

(3) Such weighing device shall electronically print a ticket which provides an exact duplicate of the weight indicated. A copy of this ticket shall be furnished to the owner of the catfish. Such ticket shall also include, but is not limited to, the following:

(a) The name and address of the processor;

(b) The name of the owner of the catfish being weighed;

(c) The date the catfish is weighed;

(d) The signature of the individual who weighs the farm-raised catfish recorded on the weight ticket;

(e) The device should print zero (0) before each weighing; and

(f) Such additional information as the Commissioner of Agriculture and Commerce deems necessary for the lawful and accurate recording of the weight of farm-raised catfish.

(4) Deductions for trash fish, turtles and other foreign materials shall be determined by a separate electronic weighing of the same with a printed ticket provided to the producer.

HISTORY: Laws, 1990, ch. 301, § 1; Laws, 1991, ch. 469, § 1; Laws, 2004, ch. 377, § 6; Laws, 2005, ch. 390, § 2, eff from and after passage (approved Mar. 16, 2005).

ARTICLE 19.

GRADING AND CERTIFICATION OF FRUITS AND NUTS.

Sec.

69-7-751. Legislative declaration and intent.
69-7-753. Food Products Certification Office; creation; establishment; and responsibilities.
69-7-755. Hiring of marketing managers; qualifications and salaries; Producer Advisory Board.

§ 69-7-751. Legislative declaration and intent.

The Legislature declares a need to promote Mississippi agricultural products to raise the overall quality of fruits, vegetables and nuts; and it is the intent of the Legislature that fruits, vegetables and nuts produced or processed, or both, in the State of Mississippi be certified and graded.

HISTORY: Laws, 1994, ch. 605, § 3, eff from and after July 1, 1994.

§ 69-7-753. Food Products Certification Office; creation; establishment; and responsibilities.

There is created in the Department of Agriculture and Commerce a Food

Products Certification Office. This office shall establish grading and certification processes for fruits, vegetables and nuts. This office shall also establish regulations and procedures to determine whether a product is produced or processed, or both, in Mississippi. The Food Products Certification Office shall be responsible for:

(a) Inspecting, grading and certifying fruits, vegetables and nuts;

(b) Coordinating and developing markets for Mississippi farmers who produce fruits, vegetables and nuts;

(c) Managing or assisting in the management of the vegetable marketing sheds; and

(d) Assisting farmers in the production of fruits and vegetables with the greatest market demand that are most adaptable to each production area.

HISTORY: Laws, 1994, ch. 605, § 4, eff from and after July 1, 1994.

§ 69-7-755. Hiring of marketing managers; qualifications and salaries; Producer Advisory Board.

The Department of Agriculture and Commerce shall hire not more than seven (7) marketing managers. The qualifications and salaries for the marketing managers shall be established by the State Personnel Board. Marketing managers shall be employed from a list of applicants approved by the State Personnel Board and recommended by the Director of the Mississippi Cooperative Extension Service, the Executive Director of the Agribusiness Council and the Commissioner of Agriculture, or their designees. Marketing managers shall be assigned to one or more of the marketing sheds at Booneville, Louisville, Wiggins, Bassfield, Taylorsville, Newton, Kemper County and Leakesville. Each of these marketing sheds shall be provided with a digital weighing scale to ensure accurate weight/grade. Each marketing shed shall establish a Producer Advisory Board consisting of four (4) local farmer producers of nuts, fruits or vegetables and three (3) produce industry representatives.

HISTORY: Laws, 1994, ch. 605, § 5, eff from and after July 1, 1994.

CHAPTER 8.

BEEF PROMOTION AND RESEARCH PROGRAM

Sec.

69-8-1. Purpose.
69-8-3. Definitions.
69-8-5. Mississippi Beef Industry Council created; membership; organization; rules and regulations; certain officers to be bonded.
69-8-7. Referendum on assessments.
69-8-9. Collection and remittance of assessments.
69-8-11. Council permitted to accept gifts, donations and grants; submission of annual report of revenues and expenditures to commissioner; administrative costs.
69-8-13. Refund of assessments.
69-8-15. Penalties for violations.

§ 69-8-1. Purpose.

The purpose of this chapter shall be to promote the growth and development of the cattle industry in Mississippi through research, advertisement, promotions, education and market development in the absence of any federal programs.

HISTORY: Laws, 2005, ch. 429, § 1, eff from and after passage (approved Mar. 21, 2005).

§ 69-8-3. Definitions.

For the purposes of this chapter, the following terms shall have the meanings ascribed to them herein unless the context clearly indicates otherwise:

(a) “Producer” means any person who owns or acquires ownership of cattle, except that a person shall not be considered to be a producer if that person’s only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee or other service fee.

(b) “Collecting person” means any livestock dealer licensed under the Packers and Stockyards Act of 1921, as amended, who makes payment to a producer for cattle purchased in Mississippi.

(c) “Council” means the “Mississippi Beef Industry Council.”

(d) “Commissioner” means the Commissioner of Agriculture and Commerce for the State of Mississippi.

HISTORY: Laws, 2005, ch. 429, § 2, eff from and after passage (approved Mar. 21, 2005).

§ 69-8-5. Mississippi Beef Industry Council created; membership; organization; rules and regulations; certain officers to be bonded.

(1) The Mississippi Beef Industry Council is created and shall be composed of eighteen (18) members as follows:

(a) Seven (7) members appointed by the Mississippi Cattlemen's Association, of whom one (1) shall be a meat scientist or a meat packer;

(b) One (1) member appointed by the Mississippi Cattlewomen's Association;

(c) Five (5) members appointed by the Mississippi Farm Bureau Federation, of whom one (1) shall be a dairy farmer and one (1) shall be a beef retailer;

(d) Five (5) members appointed by the Mississippi Livestock Marketing Association.

(2) Within thirty (30) days after the levy of the national beef promotion and research program established by the "Beef Promotion and Research Act of 1985" is finally adjudicated unconstitutional, each organization shall select its members to serve on the council. The members of the council shall meet and organize after their appointment and shall select a chairman, vice chairman and secretary-treasurer from the membership of the council. The council may establish rules and regulations for the administration of the duties of the council. The minutes of the council shall reflect the votes taken by the council concerning any contracts for projects of research, education, advertisement or promotion of the beef industry.

(3) The chairman, vice chairman and secretary-treasurer shall be bonded in an amount not less than Twenty Thousand Dollars ($20,000.00). The cost of the bonds shall be paid from the funds received under this chapter.

HISTORY: Laws, 2005, ch. 429, § 3, eff from and after passage (approved Mar. 21, 2005).

§ 69-8-7. Referendum on assessments.

(1) Within ninety (90) days after the levy of the national beef promotion and research program established by the "Beef Promotion and Research Act of 1985" is finally adjudicated unconstitutional, the commissioner is authorized to call a referendum allowing producers to vote as to whether an assessment of One Dollar ($1.00) per head on all cattle sold in the state shall be levied for the purpose of promotion and development of the Mississippi cattle industry.

(a) A cattle producer who owned or produced cattle in the year immediately preceding the referendum shall be entitled to cast one (1) vote.

(b) The council shall bear all expenses incurred in conducting a referendum.

(c) If a majority of the producers voting in the referendum vote in favor of the assessment, then a sum of One Dollar ($1.00) per head shall be levied on all cattle sold in the state. This assessment shall be applicable to all sales made on or after a date specified by the commissioner but no later than ninety (90) days after certification of the results of the election.

(d) The assessment shall be a continuing levy until either terminated by the council or repealed by a majority vote in a subsequent referendum.

(2) Subsequent referendums:

(a) Upon petition by ten percent (10%) of the producers, the commissioner shall call for a subsequent referendum to allow producers to vote on the assessment.

(b) If a referendum fails to receive a majority of affirmative votes, then the commissioner shall be authorized to call another referendum in the next succeeding year. No such referendum shall be held within a period of twelve (12) months from the date on which the last referendum was held.

(3) If this program is terminated as a result of referendum vote or for any other reason, collections received prior to the last day of the program as designated by the commissioner, will be expended within ninety (90) days in the manner in which the program was operated.

(4) The commissioner, with the approval of the council, may promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, as may be necessary to carry out this chapter.

HISTORY: Laws, 2005, ch. 429, § 4, eff from and after passage (approved Mar. 21, 2005).

§ 69-8-9. Collection and remittance of assessments.

(1) Each collecting person shall collect and remit the assessments levied by this section in accordance with Section 69-8-7.

(2) Each collecting person shall remit all assessments to the council with the required report no later than the fifteenth day of the month following the close of the reporting period.

(a) Assessments collected by the council are not state funds and will not be required to be deposited in the State Treasury.

(b) Each calendar month shall be a reporting period. The reporting period shall end at the close of business on the last day of the month.

(c) Required report information and forms shall be determined and provided by the council.

HISTORY: Laws, 2005, ch. 429, § 5, eff from and after passage (approved Mar. 21, 2005).

§ 69-8-11. Council permitted to accept gifts, donations and grants; submission of annual report of revenues and expenditures to commissioner; administrative costs.

(1) The council may accept monetary gifts, donations and grants from public as well as private sources.

(2) By July 31 of each year the council shall submit to the commissioner a complete report of all revenues and expenditures that were generated by the administration of this program in a format that has been approved by the commissioner.

(3) Of the monies collected under this program, an amount not to exceed fifteen percent (15%) of the total revenues per year shall be expended on the administrative costs of the program.

HISTORY: Laws, 2005, ch. 429, § 6, eff from and after passage (approved Mar. 21, 2005).

§ 69-8-13. Refund of assessments.

(1) Any producer may request and receive a refund of assessments levied on the sale of the producer's cattle.

(a) The request may be made only by the producer.

(b) The request must be made to the council in writing within forty-five (45) days from the date of sale.

(c) The request must include the name and address of the sale market or purchaser, date of sale, number of head sold and assessed, and proof that the assessment was deducted.

(2) The council shall mail payment of assessment refunds to the requesting producer within thirty (30) days of receiving the request.

HISTORY: Laws, 2005, ch. 429, § 7, eff from and after passage (approved Mar. 21, 2005).

§ 69-8-15. Penalties for violations.

(1) Any collecting person, who fails to file a report or pay any assessment within the time required by the commissioner, shall remit to the council a penalty of five percent (5%) of the assessment determined to be due, plus one percent (1%) for each month of delay, or fraction thereof, beginning the first month after the report was required to be filed or the assessment became due.

(2) Any collecting person who makes a false claim shall be subject to a civil penalty of not more than One Thousand Dollars ($1,000.00) payable to the council.

(3) Any collecting person required to pay an assessment as provided by this chapter, who refuses to allow full inspection of their records by the council, or who shall hinder or in any way delay or prevent the inspection of their records is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed Five Hundred Dollars ($500.00).

HISTORY: Laws, 2005, ch. 429, § 8, eff from and after passage (approved Mar. 21, 2005).

CHAPTER 9.

SOYBEAN PROMOTION BOARD

Sec.	
69-9-1.	Purpose of chapter.
69-9-3.	Creation, membership and organization of board.
69-9-5.	Levy of assessment; collection; enforcement; refund.
69-9-6.	Collection of assessment under Soybean Promotion, Research and Consumer Information Act; disposition of funds collected.
69-9-7.	Failure to file report or pay assessment; penalty.
69-9-9.	Use of funds; annual report; penalty for failure to report.
69-9-11.	Controlling effect of chapter.
69-9-13.	State Tax Commission to assist department in collecting assessments.
69-9-15.	Commissioner authorized to audit Soybean Promotion Board; information to be included in audit; injunction for violations of chapter.

§ 69-9-1. Purpose of chapter.

The purpose of this chapter is to promote the growth and development of the soybean industry in Mississippi by research, advertisement promotions and education and market development, thereby promoting the general welfare of the people of this state.

HISTORY: Codes, 1942, § 4575-231; Laws, 1970, ch. 265, § 1; brought forward without change, Laws, 2009, ch. 393, § 1, eff from and after July 1, 2009.

Cross References — Provisions regarding promotion of rice, see §§ 69-10-1 et seq.

§ 69-9-3. Creation, membership and organization of board.

(1) The Mississippi Soybean Promotion Board is hereby created, to be composed of twelve (12) members to be appointed by the Governor to serve terms of three (3) years, as hereinafter provided. All of the twelve (12) members of the board shall be producers of soybeans in the State of Mississippi. Within ten (10) days following June 1, 1970, each of the following organizations, namely, Mississippi Farm Bureau Federation, Inc., Mississippi Feed and Grain Association, Mississippi Soybean Association and Delta Council shall submit the names of six (6) soybean producers to the Governor, and he shall appoint three (3) members from the nominees of each organization to serve on the board on rotating three-year terms. The original board shall be appointed with members of each of the aforenamed organizations appointed as follows: one (1) for one (1) year, one (1) for two (2) years, and one (1) for three (3) years. Each year thereafter, not less than thirty (30) days prior to the expiration of the terms of expiring board members, the aforenamed organizations shall submit the names of three (3) nominees to the Governor and succeeding boards shall be appointed by the Governor in the same manner, giving equal representation to each organization. Vacancies which occur shall be filled in the same manner as the original appointments were made.

(2) The members of the board shall meet and organize immediately after their appointment, and shall elect a chairman, vice chairman and secretary-treasurer from the membership of the board, whose duties shall be those customarily exercised by such officers or specifically designated by the board. The chairman, vice chairman and secretary-treasurer shall be bonded in an amount not less than Twenty Thousand Dollars ($20,000.00). The cost of said bonds shall be paid from the funds received under the provisions of this chapter. Such bond shall be a security for any illegal act of such member of the board and recovery thereon may be had by the state for any injury by such illegal act of such member. The board may establish rules and regulations for its own government and the administration of the affairs of the board.

HISTORY: Codes, 1942, § 4575-232; Laws, 1970, ch. 265, § 2; brought forward without change, Laws, 2009, ch. 393, § 2, eff from and after July 1, 2009.

§ 69-9-5. Levy of assessment; collection; enforcement; refund.

(1) There is imposed and levied an assessment at the rate of One Cent (1¢) per bushel on all soybeans grown within the State of Mississippi, and such assessment shall be deducted by the purchaser from the amount paid the producer at the first point of sale, whether within or without the state. Assessments on soybeans put under loan to the Commodity Credit Corporation or purchased by the Commodity Credit Corporation and delivered to it shall be payable when such soybeans are placed under loan or are purchased. The Commodity Credit Corporation may require deduction and payment of the assessment from the loan proceeds or from the purchase price on the behalf of the producer. Assessments on soybeans put under loan to the Commodity Credit Corporation and redeemed by the producer before the takeover date, if already paid by having been deducted from the loan proceeds, shall not be deducted by each handler from the amount paid the producer at the first point of sale as provided in this section; otherwise, the assessment shall be deducted. Any soybean producer may request and receive a refund of the amount of assessment deducted from the sale of his soybeans provided he makes a written application with the Department of Agriculture and Commerce within sixty (60) days from date of sale, supported by bona fide copies of sales slips signed by the purchaser. The application forms shall be prepared by the Department of Agriculture and Commerce and shall be available at the first point of sale. All such applications shall be processed and refunds paid by the Department of Agriculture and Commerce within sixty (60) days after the funds have been received by the department. Each marketing agency shall be furnished a poster to be displayed in a prominent place, stating that refunds are available and forms to be used, including self-addressed envelopes, are available at its office.

(2) The assessment imposed and levied by this section shall be payable to and collected by the Department of Agriculture and Commerce, hereafter referred to as "the department," from the purchaser of such soybeans at the first point of sale or from the Commodity Credit Corporation as provided in

subsection (1) of this section. The proceeds of the assessment collected by the department shall be deposited with the State Treasurer in a special fund, known as the "Mississippi Soybean Promotion Fund," and promptly remitted to the Mississippi State University Foundation under the terms and conditions as the Soybean Promotion Board deems necessary to ensure that the assessments are used properly in carrying out the purposes of this chapter. The State Fiscal Officer is authorized to issue warrants for the payment of monies from the Mississippi Soybean Promotion Fund upon requisition by the Commissioner of Agriculture and Commerce, or his designee, for refunds to producers as provided under subsection (1) of this section.

(3) The department shall pay over to the Mississippi Soybean Promotion Fund the funds collected, less three and one-half percent (3-½%) of the gross amount collected. The payments to the Mississippi Soybean Promotion Board shall be accompanied by a complete report of all funds collected and disbursed.

(4) Each purchaser or the Commodity Credit Corporation shall keep a complete and accurate record of all soybeans handled by him and shall furnish each producer with a signed sales slip showing the number of bushels purchased from him and the amount deducted by him for the Mississippi Soybean Promotion Fund. Such records shall be in such form and contain such other information as the department shall by rule or regulation prescribe. The records shall be preserved by the purchaser for a period of two (2) years and shall be offered for inspection at any time upon oral or written demand by the department or any duly authorized agent or representative thereof. Every purchaser or the Commodity Credit Corporation, at such time or times as the department may require, shall submit reports or other documentary information deemed necessary for the efficient and equitable collection of the assessment imposed in this chapter. The department shall have the power to cause any duly authorized agent or representative to enter upon the premises of any purchaser of soybeans and examine or cause to be examined by such agent only books, papers and records which deal in any way with the payment of the assessment or enforcement of the provisions of this chapter.

HISTORY: Codes, 1942, § 4575-233; Laws, 1970, ch. 265, § 3; Laws, 1972, ch. 429, § 1; Laws, 1977, ch. 401; Laws, 1987, ch. 452, § 1; Laws, 1992, ch. 510, § 1; Laws, 2006, ch. 505, § 1; brought forward without change, Laws, 2009, ch. 393, § 3, eff from and after July 1, 2009.

Editor's Notes — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Payment into Mississippi Soybean Promotion Fund of proceeds from collection of assessment under Soybean Promotion, Research and Consumer Information Act, see § 69-9-6.

OPINIONS OF THE ATTORNEY GENERAL

Retail sales tax exemption for soybeans grown as seed is of no force and effect with regard to promotional assessments; therefore, effective July 1, 1992, Department of Agriculture and Commerce should collect said fees from sale of all soybeans grown within Mississippi. Ross, July 29, 1992, A.G. Op. #92-0552.

The Department of Agriculture and Commerce should remit soybean assessments to the MSU Foundation without delay and with reasonable speed after deposit in the Soybean Promotion Fund, unless it finds there are factual circumstances that prohibit such a remittance. Spell, June 23, 2006, A.G. Op. 06-0195.

§ 69-9-6. Collection of assessment under Soybean Promotion, Research and Consumer Information Act; disposition of funds collected.

(1) The Department of Agriculture and Commerce is authorized to collect the assessment created by the Soybean Promotion, Research and Consumer Information Act administered by the United States Department of Agriculture on behalf of the Mississippi Soybean Promotion Board.

(2) The department shall pay over to the Mississippi Soybean Promotion Fund, as established in Section 69-9-5, all funds collected under this section. The State Fiscal Officer is authorized to issue warrants for the payment of monies from the proceeds of this fund upon requisition by the Mississippi Commissioner of Agriculture and Commerce, or his designee, in accordance with federal statutes governing this section.

(3) The Mississippi Department of Agriculture and Commerce shall submit to the Soybean Promotion Board a budget detailing and justifying the administrative costs of the department in administering the provisions of this chapter, and such budget must be approved by the Soybean Promotion Board by April 1 of each year. The department is further authorized to retain an amount not to exceed three and one-half percent (3-½%) of the funds collected under the provisions of this section as administrative fees. The amount retained by the department must be approved by the Soybean Promotion Board by July 1 of each year. This amount may be retained from any funds collected on behalf of the Soybean Promotion Board, including those collected under the provisions of Section 69-9-5.

(4) The board shall make a report of all income and expenditures made annually and provide copies of such report to the department.

HISTORY: Laws, 1991, ch. 607 § 1; Laws, 1992, ch. 510, § 2; Laws, 2006, ch. 505, § 2, eff from and after passage (approved Mar. 29, 2006).

§ 69-9-7. Failure to file report or pay assessment; penalty.

(1) Any purchaser who fails to file a report or to pay any assessment within the time required by the department shall forfeit to the department a penalty of five percent (5%) of the assessment determined to be due, plus one percent (1%) of such amount for each month of delay or fraction thereof after the first month after such report was required to be filed or such assessment

became due. The penalty shall be paid to the department and shall be disposed of by it in the same manner as funds derived from the payment of the assessment imposed herein.

(2) The department shall collect the penalties levied herein, together with the delinquent assessment, by any or all of the following methods:

(a) By voluntary payment by the person liable.

(b) By legal proceedings instituted in a court of competent jurisdiction.

(3) Any person required to pay the assessment provided for in this chapter who fails to remit same or who refuses to allow full inspection of the premises, or such books, records or other documents relating to the liability of such person for the assessment herein imposed, or who shall hinder or in any way delay or prevent such inspection, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding One Thousand Dollars ($1,000.00) or by imprisonment not to exceed one (1) year, or both.

(4) The provisions of this chapter shall not apply to any person who purchases one thousand (1,000) or less bushels of soybeans in any calendar year, provided he is not regularly engaged in the purchase of soybeans.

HISTORY: Codes, 1942, § 4575-234; Laws, 1970, ch. 265, § 4; Laws, 1992, ch. 510, § 3; brought forward without change, Laws, 2009, ch. 393, § 4, eff from and after July 1, 2009.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 69-9-9. Use of funds; annual report; penalty for failure to report.

(1) The Mississippi Soybean Promotion Board shall plan and conduct a program of research, education and advertising designed to promote the soybean industry in Mississippi and said board is authorized to use the funds derived from the assessment imposed herein for these purposes, including basic administration expenses of said plan. Use of these funds may be applied, as prescribed in this section, within or without the State of Mississippi, including regional, national and international research and promotional applications.

(2) The funds may be expended only for the purposes set out in this chapter and shall be spent in no manner for political purposes. A report of all expenditures shall be made annually on December 31, with four (4) copies of the report to be filed and presented during regular sessions of the Mississippi Legislature with each of the following: the Chairman of the House of Representatives Agriculture Committee, the Chairman of the Senate Agriculture Committee, the Mississippi Department of Agriculture and Commerce and the State Auditor.

(3) If the board fails to make an annual report in violation of the provisions of subsection (2) of this section, the board shall be subject to a fine of not more than Five Hundred Dollars ($500.00).

HISTORY: Codes, 1942, § 4575-235; Laws, 1970, ch. 265, § 5; Laws, 2009, ch. 393, § 5, eff from and after July 1, 2009.

§ 69-9-11. Controlling effect of chapter.

Notwithstanding the provisions of any laws or parts of laws in conflict herewith, the provisions of this chapter shall be controlling to the extent of the conflict.

HISTORY: Codes, 1942, § 4575-237; Laws, 1970, ch. 265, § 7; brought forward without change, Laws, 2009, ch. 393, § 6, eff from and after July 1, 2009.

§ 69-9-13. State Tax Commission to assist department in collecting assessments.

The State Tax Commission shall provide any information necessary to assist the Mississippi Department of Agriculture and Commerce in collecting the assessments provided for in this chapter.

HISTORY: Laws, 1992, ch. 510, § 4; brought forward without change, Laws, 2009, ch. 393, § 7, eff from and after July 1, 2009.

Editor's Notes — Section 27-3-4 provides that the terms "Mississippi State Tax Commission," "State Tax Commission," "Tax Commission" and "commission" appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue.

§ 69-9-15. Commissioner authorized to audit Soybean Promotion Board; information to be included in audit; injunction for violations of chapter.

(1) The commissioner may conduct an audit of the board to verify compliance with any rules and regulations promulgated for the efficient enforcement of this chapter.

(2) Under this section, the audited board shall provide information to the commissioner that verifies the amounts received and expended from the fees assessed and collected by the department and remitted to the board. Records maintained in the course of the normal conduct of business by the board may serve as verification.

(3) The commissioner may apply for and the court may grant a temporary or permanent injunction on disbursements made to the board from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under this chapter, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

HISTORY: Laws, 2009, ch. 393, § 8, eff from and after July 1, 2009.

CHAPTER 10.

RICE PROMOTION BOARD

Sec.
69-10-1. Purpose.
69-10-2. Mississippi Rice Promotion Board; membership; organization and administration.
69-10-3. Repealed.
69-10-5. Assessment on rice grown in state; rice promotion fund; records and reports.
69-10-7. Penalties; exemption.
69-10-9. Expenditure of funds; report of expenditures; penalty for failure to report.
69-10-11. Provisions to be controlling.
69-10-13. State Tax Commission to assist department in collecting assessments.
69-10-15. Commissioner authorized to audit Rice Promotion Board; information to be included in audit; injunction for violations of chapter.

§ 69-10-1. Purpose.

The purpose of this chapter is to promote the growth and development of the rice industry in Mississippi by research, advertisement promotions and education and market development, thereby promoting the general welfare of the people of this state.

HISTORY: Laws, 1981, ch. 384, § 1; brought forward without change, Laws, 2009, ch. 393, § 9, eff from and after July 1, 2009.

Cross References — Provisions regarding promotion of soybeans, see §§ 69-9-1 et seq.

§ 69-10-2. Mississippi Rice Promotion Board; membership; organization and administration.

(1) The Mississippi Rice Promotion Board is created, to be composed of twelve (12) members to be appointed by the Governor to serve terms of four (4) years, as hereinafter provided. All of the twelve (12) members of the board shall be producers of rice in the State of Mississippi. Within ten (10) days following March 9, 1995, the Mississippi Farm Bureau Federation, Inc., the Mississippi Rice Council for Market Development and the Delta Council shall each submit the names of six (6) rice producers to the Governor, and he shall appoint four (4) members from the nominees of each organization to serve on the board on rotating four-year terms. The original board shall be appointed with members of each of the aforenamed organizations appointed as follows: one (1) for one (1) year, one (1) for two (2) years, one (1) for three (3) years and one (1) for four (4) years. Each year thereafter, not less than thirty (30) days before the expiration of the terms of expiring board members, the aforenamed organizations shall submit the names of four (4) nominees to the Governor and succeeding boards shall be appointed by the Governor in the same manner,

giving equal representation to each organization. Vacancies which occur shall be filled in the same manner as the original appointments were made.

(2) The members of the board shall meet and organize immediately after their appointment, and shall elect a chairman, vice chairman and secretary-treasurer from the membership of the board, whose duties shall be those customarily exercised by such officers or specifically designated by the board. The chairman, vice chairman and secretary-treasurer shall be bonded in an amount not less than Twenty Thousand Dollars ($20,000.00). The cost of the bonds shall be paid from the funds received under the provisions of Section 69-10-1 et seq. Such bond shall be a security for any illegal act of such member of the board and recovery thereon may be had by the state for any injury by such illegal act of such member. The board may establish rules and regulations for its own government and the administration of the affairs of the board.

HISTORY: Laws, 1995, ch. 310, § 1; brought forward without change, Laws, 2009, ch. 393, § 10, eff from and after July 1, 2009.

§ 69-10-3. Repealed.

Repealed by Laws of 1995, ch. 310, § 2, eff July 1, 1995.

§ 69-10-3. [Laws, 1994, ch. 421, § 1]

Editor's Notes — Former § 69-10-3 was entitled: Mississippi Rice Promotion Board; membership; organization and administration.

§ 69-10-5. Assessment on rice grown in state; rice promotion fund; records and reports.

(1) There is imposed and levied an assessment at the rate of Two Cents (2¢) per bushel on all rice grown within the State of Mississippi; from and after July 1, 1991, the rate of assessment shall be increased by an additional One Cent (1¢) per bushel so that the total assessment equals Three Cents (3¢) per bushel. Such assessment shall be deducted by the purchaser from the amount paid the producer at the first point of sale, whether within or without the state. Assessments on rice put under loan to the Commodity Credit Corporation or purchased by the Commodity Credit Corporation and delivered to it shall be payable when such rice is placed under loan or is purchased. The Commodity Credit Corporation may require deduction and payment of the assessment from the loan proceeds or from the purchase price on the behalf of the producer. Assessments on rice put under loan to the Commodity Credit Corporation and redeemed by the producer before the takeover date, if already paid by having been deducted from the loan proceeds shall not be deducted by each miller or handler from the amount paid the producer at the first point of sale as provided in this section; otherwise, the assessment shall be deducted.

(2) The assessment imposed and levied by this section shall be payable to and collected by the Mississippi Department of Agriculture and Commerce, hereafter referred to as "the department," from the purchaser of such rice at the first point of sale or from the Commodity Credit Corporation as provided in

subsection (1) of this section. The proceeds of the assessment collected by the department shall be deposited with the State Treasurer in a special fund, the "Mississippi Rice Promotion Fund," and promptly remitted to a foundation under such terms and conditions as the Rice Promotion Board deems necessary to ensure that such assessments are used properly in carrying out the purposes of this chapter.

(3) The Mississippi Department of Agriculture and Commerce shall submit to the Mississippi Rice Promotion Board a budget detailing and justifying the administrative costs of the department in administering the provisions of this chapter, and such budget must be approved by the Mississippi Rice Promotion Board by April 1 of each year. The department shall pay over to the Mississippi Rice Promotion Fund the funds collected, less an amount not to exceed three and one-half percent (3-½%) of the gross amount collected. The amount withheld by the department must be approved by the Mississippi Rice Promotion Board by July 1 of each year. The payments to the Mississippi Rice Promotion Board shall be accompanied by a complete report of all funds collected and disbursed.

(4) Each purchaser or the Commodity Credit Corporation shall keep a complete and accurate record of all rice handled by him and shall furnish each producer with a signed sales slip showing the number of bushels purchased from him and the amount deducted by him for the Mississippi Rice Promotion Fund. Such records shall be in such form and contain such other information as the department shall by rule or regulation prescribe. The records shall be preserved by the purchaser for a period of two (2) years and shall be offered for inspection at any time upon oral or written demand by the department or any duly authorized agent or representative thereof. Every purchaser or the Commodity Credit Corporation, at such time or times as the commissioner of the department may require, shall submit reports or other documentary information deemed necessary for the efficient and equitable collection of the assessment imposed in this chapter. The department shall have the power to cause any duly authorized agent or representative to enter upon the premises of any purchaser of rice and examine or cause to be examined by such agent, only books, papers and records which deal in any way with respect to the payment of the assessment or enforcement of the provisions of this chapter.

HISTORY: Laws, 1981, ch. 384, § 3; Laws, 1983, ch. 315; Laws, 1987, ch. 452, § 2; Laws, 1991, ch. 307 § 1; Laws, 1992, ch. 563, § 1; reenacted and amended, Laws, 1994, ch. 421, § 2; Laws, 2005, ch. 435, § 1; reenacted and amended, Laws, 2008, ch. 400, § 1; brought forward without change, Laws, 2009, ch. 393, § 11; Laws, 2011, ch. 356, § 1, eff from and after passage (approved Mar. 14, 2011).

Cross References — State Tax Commission to assist department in collecting assessments provided for in this chapter, see § 69-10-13.

OPINIONS OF THE ATTORNEY GENERAL

Retail sales tax exemption for rice grown as seed is of no force and effect with regard to promotional assessments; therefore, effective July 1, 1992, Department of

Agriculture and Commerce should collect said fees from sale of all rice grown within Mississippi. Ross, July 29, 1992, A.G. Op. #92-0552.

The Department of Agriculture and Commerce is the entity charged with collecting the state rice assessments, and the Commissioner, as executive head of the Department, may sign an agreement with the Commodity Credit Corporation for collection of certain rice assessments. Spell, Jan. 13, 2006, A.G. Op. 05-0634.

§ 69-10-7. Penalties; exemption.

(1) Any purchaser who fails to file a report or to pay any assessment within the time required by the department shall forfeit to the department a penalty of five percent (5%) of the assessment determined to be due, plus one percent (1%) of such amount for each month of delay or fraction thereof after the first month after such report was required to be filed or such assessment became due. The penalty shall be paid to the department and shall be disposed of by it in the same manner as funds derived from the payment of the assessment imposed herein.

(2) The department shall collect the penalties levied herein, together with the delinquent assessment, by any or all of the following methods:

(a) By voluntary payment by the person liable.

(b) By legal proceedings instituted in a court of competent jurisdiction.

(3) Any person required to collect the assessment provided for in this chapter who fails to remit same or who refuses to allow full inspection of the premises, or such books, records or other documents relating to the liability of such person for the assessment herein imposed, or who shall hinder or in any way delay or prevent such inspection, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding One Thousand Dollars ($1,000.00) or by imprisonment not to exceed one (1) year, or both.

(4) The provisions of this chapter shall not apply to any person who purchases one thousand (1,000) or less bushels of rice in any calendar year, provided he is not regularly engaged in the purchase of rice.

HISTORY: Laws, 1981, ch. 384, § 4; Laws, 1992, ch. 563, § 2; brought forward without change, Laws, 2009, ch. 393, § 12, eff from and after July 1, 2009.

Cross References — State Tax Commission to assist department in collecting assessments provided for in this chapter, see § 69-10-13.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 69-10-9. Expenditure of funds; report of expenditures; penalty for failure to report.

(1) The Mississippi Rice Promotion Board shall plan and conduct a program of research, education and advertising designed to promote the rice industry in Mississippi. The board is authorized to use the funds derived from the assessment imposed herein for these purposes, including basic administration expenses of the plan; provided, however, that the avails of the additional One Cent (1¢) assessment imposed from and after July 1, 1991,

shall be expended solely for programs of research to promote further development of the rice industry in this state. Use of these funds may be applied, as prescribed in this section, within or without the State of Mississippi, including regional, national and international research and promotional applications.

(2)(a) The Mississippi Legislature finds and declares that the factors which affect the ability of Mississippi rice farmers to market their crop are established by national and international forces in the world market. The Legislature further finds and declares that the expenditure of funds by the board for the purpose of influencing the development and implementation of national and international policy affecting the marketing of rice produced by Mississippi farmers is the expenditure of funds for a public purpose.

(b) The board may expend a portion of the funds received and administered by the board for the purpose of influencing the development and implementation of national and international policy affecting the marketing of rice produced by Mississippi farmers.

(c) The amount of funds expended by the board in each fiscal year for the purposes authorized in this subsection shall not exceed five percent (5%) of the budget of the board for that fiscal year.

(d) The board shall not expend any funds for the purpose of influencing any political activity.

(3) A report of all expenditures shall be made annually on December 31, with four (4) copies of the report to be filed and presented during regular sessions of the Mississippi Legislature with each of the following: the Chairman of the House of Representatives Agriculture Committee, the Chairman of the Senate Agriculture Committee, the Mississippi Department of Agriculture and Commerce and the State Auditor.

(4) If the board fails to make an annual report in violation of the provisions of subsection (2) of this section, the board shall be subject to a fine of not more than Five Hundred Dollars ($500.00).

HISTORY: Laws, 1981, ch. 384, § 5; Laws, 1991, ch. 307 § 2; Laws, 1994, ch. 421, § 3; Laws, 2009, ch. 393, § 13, eff from and after July 1, 2009.

§ 69-10-11. Provisions to be controlling.

Notwithstanding the provisions of any laws or parts of laws in conflict herewith, the provisions of this chapter shall be controlling to the extent of the conflict.

HISTORY: Laws, 1981, ch. 384, § 6; brought forward without change, Laws, 2009, ch. 393, § 14, eff from and after July 1, 2009.

§ 69-10-13. State Tax Commission to assist department in collecting assessments.

The State Tax Commission shall provide any information necessary to assist the Department of Agriculture and Commerce in collecting the assessments provided for in this chapter.

HISTORY: Laws, 1992, ch. 563, § 3; brought forward without change, Laws, 2009, ch. 393, § 15, eff from and after July 1, 2009.

Editor's Notes — Section 27-3-4 provides that the terms "Mississippi State Tax Commission," "State Tax Commission," "Tax Commission" and "commission" appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue.

§ 69-10-15. Commissioner authorized to audit Rice Promotion Board; information to be included in audit; injunction for violations of chapter.

(1) The commissioner may conduct an audit of the board to verify compliance with any rules and regulations promulgated for the efficient enforcement of this chapter.

(2) Under this section, the audited board shall provide information to the commissioner that verifies the amounts received and expended from the fees assessed and collected by the department and remitted to the board. Records maintained in the course of the normal conduct of business by the board may serve as verification.

(3) The commissioner may apply for and the court may grant a temporary or permanent injunction on disbursements made to the board from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under this chapter, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

HISTORY: Laws, 2009, ch. 393, § 16, eff from and after July 1, 2009.

CHAPTER 11.

SWINE

Sec.

69-11-1. Declaration of purpose.
69-11-3. Definition of terms.
69-11-5. Feeding garbage to swine.
69-11-7. Authority of commissioner and state veterinarian.
69-11-9. Rules and regulations.
69-11-11. Inspection and investigation.
69-11-13. Quarantine powers.
69-11-15. Penalty.

§ 69-11-1. Declaration of purpose.

The purpose of this chapter is to eradicate and prevent the spread of contagious and infectious diseases of swine in the State of Mississippi through preventative methods based upon recommendations of leading veterinary medical authorities and animal disease research scientists to the effect that raw garbage keeps causative virus alive and the feeding of such garbage causes the spread of several contagious, infectious and deadly diseases of swine. Chief among these is hog cholera which is known to be spread among swine through the feeding of raw garbage. Trichinella infection in human population, foot and mouth disease, swine erysipelas, African swine fever, tuberculosis, brucellosis and other human and animal diseases have been associated with the feeding of garbage to swine. Since the production of swine is of great economic importance not only to the farmers of Mississippi but to the general economy of the state, it is deemed for the best interest and advancement of the agricultural economy and the general welfare of the State of Mississippi to prohibit the commercial feeding of garbage to swine from and after July 1, 1972.

HISTORY: Codes, 1942, § 4575-201; Laws, 1970, ch. 264, § 1, eff July 1, 1970.

RESEARCH REFERENCES

ALR.
Liability of packer, foodstore, or restaurant for causing trichinosis. 96 A.L.R.3d 451.

§ 69-11-3. Definition of terms.

For the purpose of this chapter, the following words shall mean:

(a) "Commissioner" shall mean the commissioner of agriculture and commerce.

(b) "Person" means the state, any municipality, county, political subdivision, institution, individual, partnership, corporation or association.

(c) "Garbage" means putrescible animal and vegetable waste resulting from the handling, preparation, cooking and consumption of foods including animal and fowl carcasses or parts thereof.

(d) "Swine" means hogs, pigs or shoats.

HISTORY: Codes, 1942, § 4575-202; Laws, 1970, ch. 264, § 2, eff July 1, 1970.

§ 69-11-5. Feeding garbage to swine.

(1) It shall be unlawful for any person, municipality, county, political subdivision, governmental agency or department, institution, individual, partnership, corporation, association, other entity or organization to feed garbage to swine, except as permitted under subsection (2) of this section.

(2) This chapter shall not apply to any person who feeds only household garbage to swine for household consumption only.

(3) This chapter shall not apply to the Mississippi Department of Corrections. The department is authorized to feed to swine cooked garbage and vegetable refuse. The Mississippi Department of Corrections shall follow applicable state rules, regulations and guidelines that are equal to or exceed federal rules and regulations for cooking and feeding cooked garbage to swine. The Mississippi Department of Corrections may market and use for consumption swine that has been fed garbage.

HISTORY: Codes, 1942, §§ 4575-203, 4575-204; Laws, 1970, ch. 264, §§ 3, 4, eff July 1, 1970; Laws, 2001, ch. 357, § 1, eff from and after July 1, 2001.

§ 69-11-7. Authority of commissioner and state veterinarian.

The commissioner is hereby charged with the execution and enforcement of the provisions of this chapter and the state veterinarian shall have authority to exercise all of the powers vested in the commissioner in the enforcement of the provisions of this chapter and the rules and regulations promulgated hereunder.

HISTORY: Codes, 1942, § 4575-210; Laws, 1970, ch. 264, § 10, eff July 1, 1970.

§ 69-11-9. Rules and regulations.

The commissioner shall have power and authority to promulgate reasonable rules and regulations relating to the feeding of swine, the disposal of diseased and dead swine, and all other rules and regulations not in conflict with the provisions of this chapter designed to control and eradicate infectious and contagious diseases of swine as well as rules and regulations necessary to carry out the provisions of this chapter.

HISTORY: Codes, 1942, § 4575-211; Laws, 1970, ch. 264, § 11, eff July 1, 1970.

§ 69-11-11. Inspection and investigation.

The commissioner, the state veterinarian or any authorized employee of the department of agriculture and commerce shall have power and authority to enter upon any private or public property for the purpose of inspecting and investigating conditions relating to the feeding of swine to determine whether the requirements of this chapter are or are not being complied with and to inspect such premises for the purpose of eradicating and controlling contagious and infectious diseases of swine.

HISTORY: Codes, 1942, § 4575-208; Laws, 1970, ch. 264, § 8, eff July 1, 1970.

§ 69-11-13. Quarantine powers.

In addition to other quarantine powers now authorized by law, the commissioner, the state veterinarian, or any authorized employee of the state board of animal health are hereby authorized and empowered to quarantine any premises, area or enclosure on which swine are fed with garbage and no person shall move or allow to be moved any swine from any quarantined premises or areas except under conditions and requirements prescribed under rules and regulations promulgated by the commissioner. Quarantine notices and orders shall be served upon owners or persons having possession of swine in the manner now provided by law for quarantining premises on which diseased livestock are kept.

HISTORY: Codes, 1942, § 4575-209; Laws, 1970, ch. 264, § 9, eff July 1, 1970.

§ 69-11-15. Penalty.

Whoever violates this chapter shall be guilty of a misdemeanor and upon conviction in a court of competent jurisdiction shall be fined not less than Fifty Dollars ($50.00) nor more than Two Hundred Fifty Dollars ($250.00), and within the discretion of the court may also be imprisoned for a period not to exceed ninety (90) days. Any party violating the provisions of this law shall not be entitled to indemnity under the Cholera Indemnity Law of the State of Mississippi for any swine that have been found to have died from cholera during the period of such violation.

HISTORY: Codes, 1942, § 4575-213; Laws, 1970, ch. 264, § 13, eff July 1, 1970.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 13.

STOCK LAWS, ESTRAYS

Article 1. General Stock Law. 69-13-1
Article 3. Livestock at Large on Federal or State Highways. 69-13-101
Article 5. Highway Fencing Law. 69-13-201
Article 7. Estrays. 69-13-301

ARTICLE 1.

GENERAL STOCK LAW.

Sec.

69-13-1. General stock law.
69-13-3. Election; ballots.
69-13-5. Counties; excepted.
69-13-7. Fences.
69-13-9. Lawful fence in open range counties defined.
69-13-11. Stock law districts in counties with sea walls.
69-13-13. Tick reinfestation.
69-13-15. Stock taken up; what done.
69-13-17. Any person may take up stock.
69-13-19. Owner liable for damages.
69-13-21. How lien enforced.
69-13-23. Appeal to circuit court.
69-13-25. Case brought in circuit court to enforce lien where over two hundred dollars claimed.
69-13-27. Owner may replevy animal.

§ 69-13-1. General stock law.

There is declared, created and now in existence a statewide stock law which embraces all of the territory of the State of Mississippi and which is declared to be uniform throughout the state, except as hereinafter provided. Any person or persons owning or having under control any livestock such as cattle, horses, mules, jacks, jennets, sheep, goats and hogs, shall not permit such livestock to run at large upon the open or unfenced lands of another person, except as herein expressly provided, but shall keep such livestock confined in a safe inclosure or upon lands belonging to such person. However, upon the petition of twenty percent of the qualified electors of any county of this state, outside of the municipalities thereof, the board of supervisors of such county shall call an election to be held within sixty days after the filing of such petition for the purpose of permitting the qualified electors of such county, outside of the municipalities, to vote upon the question whether or not the provisions of the statewide stock law shall remain in force in such county, outside of the municipalities thereof; and if a majority of the qualified electors of such county, outside of the municipalities thereof, voting in said election, shall vote to sustain the statewide stock law, then it shall remain in full force and effect in said county, but should a majority of the qualified electors of said county, outside of said municipalities, voting in said election, vote against the statewide stock law, then sixty days after said election the provisions thereof shall not apply to or be in force in said county, outside of the municipalities thereof, except in its application to hogs or swine, which shall not be permitted in any event to run at large in any county of this state.

In the event a county has heretofore elected to come out from under the stock law, no less than five years after such election, upon the petition of twenty percent of the qualified electors of any such county outside the municipalities thereof, the board of supervisors shall call an election to be held within sixty days after the filing of such petition to vote upon the question of whether or not the provisions of the statewide stock law shall apply in that county outside the municipalities. If a majority of the qualified electors of such county, outside of the municipalities thereof, voting in said election, shall favor the statewide stock law, then sixty days after said election the provisions of the statewide stock law shall apply in that county outside the municipalities. If the majority of those voting in the election vote against the statewide stock law, the provisions of the statewide stock law shall continue to be inapplicable to such county outside municipalities. No election on the same question may be held more often than once every two years.

HISTORY: Codes, 1930, § 5441; 1942, § 4864; Laws, 1926, ch. 263; Laws, 1931, ch. 23; Laws, 1968, ch. 243, § 1, eff from and after passage (approved August 7, 1968).

Cross References — Authority of municipalities to regulate running at large of large animals, see § 21-19-9.

Livestock at large on federal or state highways, see §§ 69-13-101 et seq.

Laws concerning estrays, see §§ 69-13-301 et seq.

JUDICIAL DECISIONS

1. In general.

Where the statewide stock law is in full force, the owner of livestock is required to keep them under a safe enclosure of his own, without regard to whether or not other land owners in the stock law district have a sufficient fence, or any fence at all, around their crops. Galloway v. Brown, 230 Miss. 471, 93 So. 2d 459, 1957 Miss. LEXIS 390 (Miss. 1957).

In a stockowner's replevin action wherein defendant cross claimed for damages for trespass, the plaintiff was liable for such damages as the defendant could prove within a reasonable degree of certainty as resulting to his fences, pasture or oat crop by reason of the running of the plaintiff's cattle, and the disturbing of the defendant's cattle in the execution of the writ of replevin. Galloway v. Brown, 230 Miss. 471, 93 So. 2d 459, 1957 Miss. LEXIS 390 (Miss. 1957).

Neither this section nor Code 1942, § 4871, was enacted for the purpose of protecting motorists upon the public highways from personal injury or property damage caused by collision with domestic animals straying onto the highway, but for the purpose of protecting agricultural crops in stock law areas from the ravages of straying livestock. Pennyan v. Alexander, 229 Miss. 704, 91 So. 2d 728, 1957 Miss. LEXIS 317 (Miss. 1957).

It is enough that the presence and actions of dogs and chickens create nuisance, and it is immaterial that such are not included with the terms of this section. White v. Lewis, 213 Miss. 686, 57 So. 2d 497, 1952 Miss. LEXIS 412 (Miss. 1952).

It is within the constitutional power of the legislature to enact laws so as to prevent animals from running at large, and to require them to be confined within safe inclosures. Bonnett v. Brown, 155 Miss. 833, 125 So. 427, 1930 Miss. LEXIS 127 (Miss. 1930).

In an action against railroad company for killing a mule where the company's liability was questioned by the jury, a stock ordinance in force in the city has no application to defendant's liability. O'Kelly v. Yazoo & M. V. R. Co., 94 Miss. 635, 47 So. 660, 1909 Miss. LEXIS 320 (Miss. 1909).

OPINIONS OF THE ATTORNEY GENERAL

Section 69-13-1 of the general stock laws mandates that all livestock owners "keep such livestock confined in a safe inclosure or upon lands belonging to such person." The presence of a cattle gap does not serve to legally create an "open range" or remove this obligation. Caldwell, August 9, 1996, A.G. Op. #96-0425.

RESEARCH REFERENCES

Am. Jur.

4 Am. Jur. 2d, Animals §§ 92-95 et seq.

2 Am. Jur. Legal Forms 2d, Animals § 20:237 (contract – development of dairy herd).

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 41 et seq. (animals running at large or trespassing).

CJS.

3B C.J.S., Animals §§ 200, 211 et seq.

§ 69-13-3. Election; ballots.

The board of supervisors shall provide for the holding of elections under the provisions of this article in the same manner as now provided by law for holding special elections in the county and the ballots for such election shall have written or printed upon them the following:

"For State-Wide Stock Law ________
Against State-Wide Stock Law ________"

But the result of said election in any county shall in no wise affect the operation of the state-wide stock law in so far as it relates to hogs. When an election has been held in any county, then no other election shall be held in that county within twelve months.

HISTORY: Codes, 1942, § 4866; Laws, 1931, ch. 23.

§ 69-13-5. Counties; excepted.

The provisions of this article as to holding elections as provided in Section 69-13-1, shall not apply in any county where or in which more than one-fourth of the total number of acres of land in such county, according to the federal farm census of 1930, are in actual cultivation, that is to say that in all counties in the state in which one-fourth of the land is in cultivation, according to the federal farm census of 1930, the provisions of the state-wide stock law shall be and remain in full force and effect.

HISTORY: Codes, 1942, § 4867; Laws, 1931, ch. 23.

§ 69-13-7. Fences.

If two or more adjoining counties shall at an election called pursuant to Section 69-13-1, vote against the state-wide stock law, then in such case, no fence or other barrier along the boundary lines of such county shall be necessary. However, in the event that two or more counties shall at such an election vote against the state-wide stock law, but an adjoining county or counties shall elect to remain under the provisions of the state-wide stock law, then the county or counties voting against the state-wide stock law shall, at its or their own proper cost and expense, before the provisions hereof shall become effective in such county or counties, build and erect and maintain along the line or lines of such counties a good and substantial fence or other sufficient barrier to prevent the intrusion of all such livestock mentioned in Section 69-13-1 as are permitted by the provisions of said section in such county or counties voting against the state-wide stock law, over, on, and upon the territory of the county or counties remaining under the provisions of the state-wide stock law. The fence herein provided shall be a fence satisfactory to and prescribed by the board of animal health, but no cattle guard or other obstruction shall be constructed or placed on any state highway. However, any infested county must provide watchmen night and day at such points to prevent cattle from passing through the gap where county fences would cross state highways.

HISTORY: Codes, 1942, § 4865; Laws, 1931, ch. 23.

§ 69-13-9. Lawful fence in open range counties defined.

In open range counties all fences four feet high, in good repair, and substantially and closely built with rails, planks, pickets, hedges or other substantial material, or with wires or wires and plank are lawful fences; and lawful fences may be made by raising the ground into a ridge and erecting thereon a fence of rails, planks, pickets, hedges, wires, or planks and wires, or other substantial material so that the ridge and fence together be four feet high, and such material so used shall not be more than six inches apart.

HISTORY: Codes, 1942, § 4865-01; Laws, 1946, ch. 435, §§ 1, 2.

§ 69-13-11. Stock law districts in counties with sea walls.

In counties in the State of Mississippi wherein sea walls or similar structures are constructed and maintained by the county, and in which there are two or more municipalities, each of which have ten thousand inhabitants or more, the board of supervisors in such counties may, by ordinance, create a stock law district of such area adjoining such sea wall or structure as such board may determine and adjudicate, not to extend more than one mile from such sea wall. The ordinance which may be so adopted by the board of supervisors creating such a stock law district may prohibit live stock such as cattle, horses, mules, jacks, jennets, sheep, goats, or hogs, running at large within the territory so designated as the stock law district, and such ordinance so adopted by the board of supervisors shall provide the method in which such stock law may be enforced in said district, and the penalty for the violation thereof, shall be in accordance with the provisions of the general statewide stock law.

The board of supervisors is hereby authorized and empowered to accept donations, grants or gifts from any private individual, corporation or organization, for the purpose of building and constructing fence or fences as necessary to protect such area.

HISTORY: Codes, 1942, § 4869; Laws, 1938, ch. 291.

§ 69-13-13. Tick reinfestation.

If any county in the State of Mississippi by vote comes from under the provisions of the present state-wide stock law, and said county thereafter becomes tick infested, all expenditures in connection with the tick eradication in said county or tick infested area or areas, must be paid from the funds of said county, except the salary and expenses of the state officers and agents. Furthermore, any county that comes from under the state-wide stock law under the provisions of Sections 69-13-1 through 69-13-27 and becomes infested with the Texas fever tick, the same shall, on complaint of the board of animal health, go back under the provisions of the state-wide stock law.

HISTORY: Codes, 1942, § 4868; Laws, 1931, ch. 23.

Cross References — Board of Animal Health, see §§ 69-15-2 et seq.

Authorization of board of supervisors to assist in eradicating tick fever, see § 69-15-307.

RESEARCH REFERENCES

CJS.

3B C.J.S., Animals §§ 94 et seq.

§ 69-13-15. Stock taken up; what done.

Any livestock as referred to in Section 69-13-1, found running at large upon the lands of any other person than the owner or custodian of such stock, may be taken up by any sheriff, constable, marshal, or other peace officer of the state within his territorial jurisdiction, and confined within a safe enclosure. If such animal, or animals, taken up be infested with, or exposed to Texas fever tick, they may be dipped by such officers, or persons, having such animal, or animals, so confined, until said livestock are free from infestation, and said dipping shall be under the rules and regulations prescribed by the board of animal health as near as possible. And the charges for so taking up and confining, together with any damage done by said stock, if any, shall be a special, first and paramount lien upon said livestock, and unless same are paid by the owner, or persons having such livestock under his control, when so notified, such livestock shall be sold as estrays, and the cost of taking up and confining, and damages, if any, together with other costs and expenses, shall first be deducted, and the balance, if any, shall be paid to the owner, or person having such livestock under his control, and the officer, or person, taking up such livestock, in addition to all other charges as now allowed by law, shall receive 50 cents per head for each dipping of each animal infested with or exposed to fever tick.

HISTORY: Codes, 1930, § 5442; 1942, § 4870; Laws, 1926, ch. 263.

Cross References — Authority of municipalities to regulate running at large of large animals, see § 21-19-9.

Estrays, generally, see §§ 69-13-301 et seq.

JUDICIAL DECISIONS

1. In general.

The owner of lands was entitled to equitable relief by way of permanent injunction against the repeated and continuous trespassing of defendant's stock roaming at large and was not relegated to the statutory remedy of taking up the stock and making a charge therefor; such remedy was wholly inadequate to protect her against such repeated and continuous trespasses, notwithstanding an alleged custom established in the neighborhood of permitting stock to roam at large on the open range. Rosenblatt v. Escher, 184 Miss. 274, 185 So. 551, 1939 Miss. LEXIS 21 (Miss. 1939).

RESEARCH REFERENCES

Am. Jur.

4 Am. Jur. 2d, Animals §§ 92-95 et seq.

2 Am. Jur. Legal Forms 2d, Animals, §§ 20:251 et seq. (trespassing animals).

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 41 et seq. (animals running at large or trespassing).

CJS.

3B C.J.S., Animals §§ 200, 211 et seq.

§ 69-13-17. Any person may take up stock.

Any such livestock as referred to in Section 69-13-1 may be taken up and confined by any person upon whose land such animal, or animals, may have entered or may be found, such person not having consented for the animal, or animals, to run at large on such land, and when so taken up shall be dealt with as estrays. For taking up any animal the person so taking the animal up shall be allowed Ten Dollars ($10.00) per head for each animal so taken up, but in no case shall he be entitled to receive more than Fifty Dollars ($50.00) for stock taken up at any one time. He may also receive reasonable compensation for feeding and caring for such animals while keeping them.

HISTORY: Codes, 1857, ch. 16, art. 16; 1871, § 1922; 1880, § 985; 1892, §§ 2046, 2047; 1906, §§ 2225, 2226; Hemingway's 1917, §§ 4544, 4545; 1930, § 5444; 1942, § 4872; Laws, 1978, ch. 372, § 1, eff from and after July 1, 1978.

Cross References — Estrays, generally, see §§ 69-13-301 et seq.

JUDICIAL DECISIONS

1. In general.

In replevin action to recover cattle which had been taken up by defendant for straying onto his land, wherein defendant made cross-demand for damages to oat crop and land, and for taking up, caring and feeding the cattle, allowance of double damages for taking up, caring and feeding the cattle was erroneous. Calcote v. May, 207 Miss. 547, 42 So. 2d 742, 1949 Miss. LEXIS 363 (Miss. 1949).

§ 69-13-19. Owner liable for damages.

Every owner of livestock referred to in Section 69-13-1 shall be liable for damages for all injuries and trespasses committed by such animals by breaking and entering into or upon the lands, grounds, or premises of another person; and the person injured shall have a lien upon the animal, or animals, trespassing for all such damage. The damages for such trespass shall not be less than Ten Dollars ($10.00) for each horse, cow or hog, and Five Dollars ($5.00) for each of the other kinds of stock; and for every succeeding offense, after the owner has been notified of the first trespass or injury, double damages shall be recovered with costs. For breaking or entering into a pasture or waste ground, however, double damage shall not be recoverable, and the damages in such cases may be assessed as low as Eight Dollars ($8.00) for each horse, cow or hog and Two Dollars ($2.00) for each of the other kinds of livestock.

HISTORY: Codes, Hutchinson's 1848, ch. 12, art. 6 (1); 1857, ch. 16, art. 15; 1871, § 1921; 1880, § 984; 1892, §§ 2043, 2044, 2045; 1906, §§ 2222, 2223, 2224; Hemingway's 1917, §§ 4541, 4542, 4543; 1930, § 5443; 1942, § 4871; Laws, 1978, ch. 376, § 1, eff from and after July 1, 1978.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Roadways.
3. Damages reasonable.

1. In general.

Statute provides a guideline for the trial court to follow when calculating damages, and the damages can be assessed for as little as $8.00, but the statute does not limit the court's ability to impose heftier sums per trespassing event; it is within the trial court's discretion to assess damages in order to make the injured party whole. Maslon v. Brown, 148 So. 3d 27, 2014 Miss. App. LEXIS 541 (Miss. Ct. App. 2014).

The statutory guide to damages set forth in § 69-13-19 for loss of crops as a result of trespass of livestock is not the maximum amount of damages allowed but it is the minimum. Stephens v. Brock, 568 So. 2d 702, 1990 Miss. LEXIS 296 (Miss. 1990).

Where defendant cross claimed for damages for trespass in a stockowner's replevin action, the stockowner was liable for such damages as the defendant could prove within a reasonable degree of certainty as resulting to his fences, pasture or oat crop by reason of the running of the plaintiff's cattle, and the disturbing of the defendant's cattle in the execution of the writ of replevin. Galloway v. Brown, 230 Miss. 471, 93 So. 2d 459, 1957 Miss. LEXIS 390 (Miss. 1957).

In a stock owner's replevin action wherein defendant counterclaimed for damages caused by trespassing, an instruction which might have misled the jury to believe that they were authorized to assess the plaintiff with the value of his own cattle in addition to, and as a part of, the allowance to defendant of damages, was error, since defendants were only entitled to have their lien established against the cattle for the amount of actual damages sustained by them by reason of the trespassing of the plaintiff's cattle upon their land, fences and crops, the amount of which should be proved with a reasonable degree of certainty as a proximate result of the fault of the plaintiff. Galloway v. Brown, 230 Miss. 471, 93 So. 2d 459, 1957 Miss. LEXIS 390 (Miss. 1957).

In a stock owner's replevin action wherein landowner counterclaimed for damages caused by the trespassing cattle, the landowner was not entitled to any damage caused after the stock owner offered to remove his cattle and was prevented by the landowner from doing so, or refrained from doing so because of the strenuous objection of the landowner. Galloway v. Brown, 230 Miss. 471, 93 So. 2d 459, 1957 Miss. LEXIS 390 (Miss. 1957).

Double damages were not allowable under this section where stockowner's cattle had entered upon and grazed upon a portion of an oat field which was planted for and used only as a pasture for cattle belonging to landowner and others, and an instruction, authorizing the assessment of such damages if the jury found there had been, to the knowledge of the stockowner, former trespasses, was erroneous. Galloway v. Brown, 230 Miss. 471, 93 So. 2d 459, 1957 Miss. LEXIS 390 (Miss. 1957).

The liability of owner of livestock trespassing upon the lands of another in a stock law district for the actual damages caused by the trespassing cattle is absolute. Galloway v. Brown, 230 Miss. 471, 93 So. 2d 459, 1957 Miss. LEXIS 390 (Miss. 1957).

In replevin action to recover cattle which defendant had taken up when they strayed onto his land, wherein defendant made a cross-demand for damages to oat crop and land, and for taking up, caring and feeding the cattle, charges for taking up the cattle and their care and feeding are not subject to double damages. Calcote v. May, 207 Miss. 547, 42 So. 2d 742, 1949 Miss. LEXIS 363 (Miss. 1949).

Owner of trespassing stock is absolutely liable for damages done by them to the crops of others and questions of due care and negligence in confining stock are eliminated. Minor v. Dockery, 125 Miss. 727, 88 So. 321, 1921 Miss. LEXIS 160 (Miss. 1921).

It was reversible error to instruct the jury that before plaintiff can recover, the hogs of defendant must have done all the damage sued for. Merrill v. Dockery, 124 Miss. 41, 86 So. 709, 1920 Miss. LEXIS 493 (Miss. 1920).

The common law which requires the owner of stock to keep them from trespassing upon the land of others has no application here; but the whole subject is under the control and power of the legislature and it may, without violating any legal rights, require an owner to so confine his stock as to keep them off the land of others. Anderson v. Locke, 64 Miss. 283, 1 So. 251, 1886 Miss. LEXIS 57 (Miss. 1886).

If an act of legislature against stock running at large authorize stock trespassing to be taken up and carried to the nearest justice of the peace, to be sold by him after due notice given, the fact that the justice, in any given case is father-in-law of the party on whose land the cattle have been trespassing does not render him incompetent to perform such act, since it is not judicial in its character. Anderson v. Locke, 64 Miss. 283, 1 So. 251, 1886 Miss. LEXIS 57 (Miss. 1886).

If one allow the stock of a stranger to mingle with his own and trespass on another, he is "owner" pro hac vice, and liable for the damages done by all the stock. Montgomery v. Handy, 62 Miss. 16, 1884 Miss. LEXIS 6 (Miss. 1884).

The common inclosure remains until one party has entirely segregated his lands from the others by a lawful fence. Montgomery v. Handy, 62 Miss. 16, 1884 Miss. LEXIS 6 (Miss. 1884).

To constitute a common inclosure, the fence surrounding it need not be a lawful fence. Montgomery v. Handy, 62 Miss. 16, 1884 Miss. LEXIS 6 (Miss. 1884).

2. Roadways.

Neither Code 1942, § 4864, nor this section was enacted for the purpose of protecting motorists upon the public highways from personal injury or property damage caused by collision with domestic animals straying onto the highway, but for the purpose of protecting agricultural crops in stock law areas from the ravages of straying livestock. Pennyan v. Alexander, 229 Miss. 704, 91 So. 2d 728, 1957 Miss. LEXIS 317 (Miss. 1957).

3. Damages reasonable.

Damage to the owner's property was temporary in nature and could be corrected through repairs, and the argument that the damages were not established with reasonable certainty was without merit; there was testimony and evidence in the form of police reports that established damages to the owner's property, and the damages awarded for the cattle trespass were not unreasonable and outrageous. Maslon v. Brown, 148 So. 3d 27, 2014 Miss. App. LEXIS 541 (Miss. Ct. App. 2014).

RESEARCH REFERENCES

ALR.

Landlord's liability to third person for injury resulting from attack by dangerous or vicious animal kept by tenant. 81 A.L.R.3d 638.

Liability for personal injury or death caused by trespassing or intruding livestock. 49 A.L.R.4th 710.

CJS.

3B C.J.S., Animals §§ 328 et seq.

§ 69-13-21. How lien enforced.

The person taking up an animal trespassing, after two days may begin his action to recover damages and charges and to enforce his lien, by filing a bill of particulars of his damages, together with a description of the animal on which the lien is claimed, with a justice of the peace, if his claim does not exceed two hundred dollars; and the justice shall issue a summons for the owner or person entitled to the custody, returnable instanter at such place as he shall designate; and if the animal be not in the custody of the plaintiff, the justice may issue a writ commanding the officer to seize the animal. The summons being executed and returned, the justice shall proceed as in other suits. If the justice finds in favor of the plaintiff, he will assess the damages and charges and enter judgment accordingly, and direct the animal to be sold to satisfy the judgment; and if the animal be not in custody of the plaintiff or officer the order for sale may embrace a command to levy upon it.

HISTORY: Codes, 1880, § 985; 1892, § 2049; 1906, § 2228; Hemingway's 1917, § 4547; 1930, § 5445; 1942, § 4873.

Cross References — Liens, generally, see §§ 85-7-1 et seq.

Remedy to enforce liens, generally, see § 85-7-31.

RESEARCH REFERENCES

Am. Jur.

2 Am. Jur. Legal Forms 2d, Animals, §§ 20:201 et seq. (trespassing animals).

§ 69-13-23. Appeal to circuit court.

The party against whom judgment may be given in a case to enforce a lien pursuant to Section 69-13-21 may appeal to the circuit court as other cases.

HISTORY: Codes, 1880, § 987; 1892, § 2050; 1906, § 2229: Hemingway's 1917, § 4548; 1930, § 5446; 1942, § 4874.

Cross References — Appeals from justices of the peace in civil cases, generally, see § 11-51-85.

§ 69-13-25. Case brought in circuit court to enforce lien where over two hundred dollars claimed.

If the amount claimed for the damages by animals trespassing exceed two hundred dollars, the plaintiff will proceed by petition in the circuit court, wherein the proceedings shall be according to the practice of that court; and the clerk shall perform the ministerial duties prescribed for justices of the peace in cases before them.

HISTORY: Codes, 1892, § 2051; 1906, § 2230; Hemingway's 1917, § 4549; 1930, § 5447; 1942, § 4875.

Cross References — Practice in circuit court, see §§ 9-7-3 et seq.

§ 69-13-27. Owner may replevy animal.

The owner of the animal, or person entitled to the custody, may, after suit is brought and before final judgment, replevy the animal by giving bond, with sufficient sureties, to be approved by the justice of the peace, clerk, constable, or sheriff, in double the value thereof; and thereafter the suit shall proceed and the bond be in the place of the animal, and judgment may be rendered against the obligors therein.

HISTORY: Codes, 1880, § 986; 1892, § 2052; 1906, § 2231; Hemingway's 1917, § 4550; 1930, § 5448; 1942, § 4876.

JUDICIAL DECISIONS

1. In general.

In a stockowner's replevin action wherein defendant cross-claimed for damages for trespass, the plaintiff was liable for such damages as the defendant could prove within a reasonable degree of certainty as resulting to his fences, pasture or oat crop by reason of the running of the plaintiff's cattle, and the disturbing of the defendant's cattle in the execution of the writ of replevin. Galloway v. Brown, 230 Miss. 471, 93 So. 2d 459, 1957 Miss. LEXIS 390 (Miss. 1957).

The surety, although he may in a proper case assert nonliability thereunder by contesting his original liability or asserting discharge, is not properly a party to the action of replevin, and must cede to his principal the responsibility of a defense upon the merits. Calcote v. May, 207 Miss. 547, 42 So. 2d 742, 1949 Miss. LEXIS 363 (Miss. 1949).

Surety on possessory bond in replevin suit under this section may not draw upon either the forbearance of the defendant or the neglect of the plaintiff to avoid a liability upon the bond which was evidently satisfactory to both. Calcote v. May, 207 Miss. 547, 42 So. 2d 742, 1949 Miss. LEXIS 363 (Miss. 1949).

Surety on replevin bond could not contend that no judgment could be allowed against him because the bond was ineffectual on the ground that statute required at least two individual sureties. Calcote v. May, 207 Miss. 547, 42 So. 2d 742, 1949 Miss. LEXIS 363 (Miss. 1949).

Surety on replevin bond is not entitled to notice of the fact of loss of the replevin bond and proceedings for its substitution or re-establishment under §§ 766, 767, Code of 1942. Calcote v. May, 207 Miss. 547, 42 So. 2d 742, 1949 Miss. LEXIS 363 (Miss. 1949).

ARTICLE 3.

LIVESTOCK AT LARGE ON FEDERAL OR STATE HIGHWAYS.

Sec.	
69-13-101.	Unlawful for livestock to roam at large on federal or state designated highways.
69-13-103.	Responsibility of commissioner of public safety for impounding of livestock; authority of supervisors.
69-13-105.	Charges against impounded livestock.
69-13-107.	Highway safety patrol to provide equipment or contract with private individuals to remove livestock.
69-13-109.	Description of impounded livestock to be published; form; notice of sale.
69-13-111.	Owners of livestock roaming at large liable for damages.
69-13-113.	State or county not liable for injury to impounded livestock.
69-13-115.	Penalty for removal of impounded livestock without paying fees.
69-13-117.	Nature and construction of article.

§ 69-13-101. Unlawful for livestock to roam at large on federal or state designated highways.

It shall be and is hereby declared unlawful for any livestock to roam at large on the federal or state designated paved highways or highway rights-of-way of the State of Mississippi, except, however, that in those counties that have heretofore voted to come out from under the statewide stock law this shall only apply to U.S. designated highways, Mississippi Highway 55, and all paved Mississippi highways where said highways traverse more than one (1) county and connect directly with another paved highway in another state being extensively traveled by citizens of other states, and the rights-of-way thereof; and except also that this section shall not apply to any such highway or highway right-of-way or any type of highway or road located on any levee maintained by the Board of Mississippi Levee Commissioners or the board of levee commissioners for the Yazoo-Mississippi Delta through maintenance contracts calling for or permitting pasturage of livestock on levee rights-of-way.

HISTORY: Codes, 1942, § 4876-01; Laws, 1956, ch. 140, § 1; Laws, 1958, ch. 463, § 1; Laws, 1979, ch. 331, eff from and after passage (approved March 1, 1979).

RESEARCH REFERENCES

ALR.

Liability for damage to motor vehicle or injury to person riding therein from collision with runaway horse, or horse left unattended or untied in street. 49 A.L.R.4th 653.

Liability for personal injury or death caused by trespassing or intruding livestock. 49 A.L.R.4th 710.

Am. Jur.

4 Am. Jur. 2d, Animals §§ 92-95 et seq.

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 41 et seq. (animals running at large or trespassing).

CJS.

3B C.J.S., Animals §§ 211 et seq.

§ 69-13-103. Responsibility of commissioner of public safety for impounding of livestock; authority of supervisors.

The commissioner of public safety shall be placed in charge of and be responsible for the taking up and impounding of livestock found on the highways or highway right-of-ways described in Section 69-13-101. The commissioner of public safety is authorized, in his discretion, to secure the services of any person or persons residing in the respective counties of the state where he deems it necessary or advisable, other than an elected county officer, who shall assist the highway safety patrol in taking up such loose livestock and impounding the same in a private enclosure, which the private individual provides, without any cost to the state, such an individual being paid solely from the fees and assessments hereinafter provided against any such livestock. The commissioner of public safety, in the alternative, may require that such livestock be impounded in an enclosure, in the event the board of supervisors of that county has provided such an enclosure for that purpose.

A private individual hired by the commissioner of public safety to pick up loose livestock may not pick up such livestock off the highways and highway right-of-ways unless a state highway patrolman, or a sheriff or his deputy, or a constable, or some other law enforcement officer is present at the time such livestock is picked up.

The board of supervisors of each county within the State of Mississippi may, in its discretion, make provision for the care of animals so taken up and impounded under the provisions of this article and all county officers and law enforcement officers are directed to give full cooperation to the highway safety patrol in carrying out the provisions of this article.

HISTORY: Codes, 1942, § 4876-01; Laws, 1956, ch. 140, § 1; Laws, 1958, ch. 463, § 1.

RESEARCH REFERENCES

CJS.

3B C.J.S., Animals §§ 134 et seq.

§ 69-13-105. Charges against impounded livestock.

The fees, assessments, liens and charges against livestock picked up and impounded under Sections 69-13-101 and 69-13-103 are as follows:

(a) An assessment of Ten Dollars ($10.00) per head, which shall go to the private individual employed by the commissioner of public safety to perform such work.

(b) Two Dollars and Fifty Cents ($2.50) per head, which shall be an impoundment fee, One Dollar ($1.00) of which shall be forwarded, for each animal impounded, to the state treasurer, earmarked for the Mississippi Highway Safety Patrol, on the first day of each month, and the balance of One Dollar and Fifty Cents ($1.50) shall be deposited in the general county fund of the county in which the animal is impounded.

(c) There shall be an assessment of One Dollar and Fifty Cents ($1.50) per day, per head of impounded livestock, such assessment to be deposited in the general county fund to pay for the cost of feeding and caring for such livestock, if the livestock is impounded in a county-owned and operated enclosure, but if the animal is impounded in a private enclosure provided by the private individual employed by the commissioner of public safety, such fee shall be paid to that individual.

(d) Any incidental costs, such as securing the services of a veterinarian, a milker or other necessary incidental expenses.

All the above assessments, fees and costs shall be and are hereby made a first and paramount lien upon such animals until same are paid in full, and upon the sale of the livestock, as provided in this article, all such assessments shall be withheld and taken from the proceeds of the sale and paid to the proper person, officer or fund as set forth above prior to the payment of any amount to the original owner of the animal.

HISTORY: Codes, 1942, § 4876-01; Laws, 1956, ch. 140, § 1; Laws, 1958, ch. 463, § 1; Laws, 1973, ch. 321, § 1, eff from and after passage (approved March 14, 1973).

Cross References — Liens, generally, see §§ 85-7-1 et seq.

RESEARCH REFERENCES

CJS.

3B C.J.S., Animals §§ 134 et seq.

§ 69-13-107. Highway safety patrol to provide equipment or contract with private individuals to remove livestock.

The Mississippi Highway Safety Patrol shall, in the alternative:

(a) Provide necessary equipment to remove such livestock from the highways and shall impound all livestock found on all highways as provided in this article, or

(b) Contract for and obtain the services of private individuals to remove such livestock from the highways and impound the same in the private pen or enclosures provided by such private individuals, in accordance with the provisions of this article.

HISTORY: Codes, 1942, § 4876.03; Laws, 1956, ch. 140, § 3; Laws, 1958, ch. 463, § 2.

§ 69-13-109. Description of impounded livestock to be published; form; notice of sale.

When any livestock shall have been taken up and impounded in the enclosure to be provided by the board of supervisors, the sheriff of said county or counties shall be responsible for having the descriptions of all such livestock published in one weekly newspaper with general circulation in that part of the county where livestock was taken up. Such notice shall be in substantially the following form:

"To Whom It May Concern:

You are hereby notified that the following described livestock (giving full and accurate description of same, including marks and brands) is now impounded at (giving location where livestock is impounded) ________ and the amount due by reason of such impounding is $ ____ dollars per day. The above described livestock will, unless redeemed within five (5) days from date hereof, be offered for sale at public auction to the highest and best bidder for cash.

________ ________________________________

Date Sheriff of ________ County, Mississippi"

Unless the impounded livestock is redeemed within five days from date of notice, the sheriff shall forthwith give notice of sale thereof which shall be held not less than five days nor more than twelve days (excluding Sundays and holidays) from the first publication of the notice of sale. Said notice of sale shall be published in a newspaper of general circulation in the said county (excluding Sundays and holidays) and by posting a copy of such notice at the court house door. If there be no such newspaper then by posting such copy at the court house door and at two other conspicuous places in said county.

Such notice of sale shall be in substantially the following form:

"(Name of owner, if known, otherwise 'To Whom It May Concern') you are hereby notified that I will offer for sale and sell at public sale to the highest and best bidder for cash the following described livestock (giving full and accurate description of each head of livestock) at ________ o'clock, ____ .M. (the hour of sale to be between 11 o'clock A.M. and 2 o'clock P.M. Central Standard Time) on the ________ day of ________ at the following place: ________ (which place shall be where the livestock is impounded or at the place provided by the county commissioners for the taking up and keeping of such livestock) to satisfy a claim in the sum of ________ for fees, expenses for feeding and care and costs hereof.

________ ________________________________

Date Sheriff of ________ County, Mississippi"

If the rightful owners shall claim the impounded animals, they may do so by paying all assessments or liens as herein provided, after signing for them on forms provided by the commissioner of public safety, such forms to include the descriptions of said animals. All receipts shall be deposited in a special fund known as the "Sheriff's Livestock Sale Fund." If it is later determined who the rightful owners are, the sheriff may have refunded to them the selling price after all liens are paid. Any funds accrued in this account shall, on June first of each year, be transferred to the general county fund.

HISTORY: Codes, 1942, § 4876-02; Laws, 1956, ch. 140, § 2, eff from and after six months after passage (approved April 5, 1956).

§ 69-13-111. Owners of livestock roaming at large liable for damages.

The owners of livestock which through their owner's negligence are found on federal or state designated paved highways or highway rights-of-way shall be subject to any damages as a result of wrecks, loss of life or bodily injury as a result of said livestock being on the above designated highways. This section shall not be applicable to any such highway or highway right-of-way or any type of highway or road located on any levee maintained by the Board of Mississippi Levee Commissioners or the board of levee commissioners for the Yazoo-Mississippi Delta through maintenance contracts calling for or permitting pasturage of livestock on levee rights-of-way.

HISTORY: Codes, 1942, § 4876-05; Laws, 1956, ch. 140, § 5; Laws, 1979, ch. 330, eff from and after passage (approved March 1, 1979); Laws, 2020, ch. 459, § 1, eff from and after passage (approved July 8, 2020).

Editor's Notes — Laws of 2020, ch. 459, § 2, effective July 8, 2020, provides:

"SECTION 2. The provisions of this act shall not be applicable to any case filed before July 1, 2020."

Amendment Notes — The 2020 amendment, effective July 8, 2020, deleted the former second sentence, which read: "The burden shall be on the owner of any such livestock to prove lack of negligence."

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability.
3. Lack of negligence.

1. In general.

The language of § 69-13-111 stating that the "burden shall be on the owner of any such livestock to prove lack of negligence" applies to both the act and proximate cause elements of a negligence claim, so that the statute creates a presumption that the owner of stray livestock is negligent in his or her confinement of the animal, and also creates a presumption of proximate causation; the presumption does not create a case of absolute liability, but simply makes a prima facie case of negligence to the extent that the defendant is then called upon to meet it with an explanation. Carpenter v. Nobile, 620 So. 2d 961, 1993 Miss. LEXIS 242 (Miss. 1993).

In the absence of evidence of negligence in the maintenance of his fences on the part of the owner of a calf, he was not liable in damages to a motorist whose car collided with the animal on a public highway. Hartford Ins. Group v. Massey, 216 So. 2d 415, 1968 Miss. LEXIS 1224 (Miss. 1968).

Proof by a truck owner that his vehicle was damaged as result of a collision between the truck and a bull belonging to defendants, and that the collision took place on a state-designated, paved highway established a prima facie case for liability under this section. Hagger v. Self, 254 Miss. 508, 183 So. 2d 175, 1966 Miss. LEXIS 1554 (Miss. 1966).

Evidence that a bull which damaged a truck on a public highway made its escape by pushing a four-strand barbed wire fence to the ground met the owners' burden that the escape of the animal had been without negligence on their part. Hagger v. Self, 254 Miss. 508, 183 So. 2d 175, 1966 Miss. LEXIS 1554 (Miss. 1966).

The owner of livestock straying onto highway and there causing damage has the burden of proving absence of negligence. National Dairy Products Corp. v. Jumper, 241 Miss. 339, 130 So. 2d 922, 1961 Miss. LEXIS 353 (Miss. 1961).

2. Applicability.

In a case for damages arising from a collision between a driver and a bull, while the statute created a presumption of negligence against the owner of livestock involved in an accident on a highway, it did not necessarily preclude a finding of negligence against a keeper of an animal who exercised control over the animal. McMillan v. Rodriguez, 823 So. 2d 1173, 2002 Miss. LEXIS 255 (Miss. 2002).

This section did not apply to an accident involving a motor vehicle and a cow which occurred on a county road. Barrett v. Parker, 757 So. 2d 182, 2000 Miss. LEXIS 34 (Miss. 2000).

3. Lack of negligence.

In an action arising out of an accident involving the plaintiff's car and the defendant's bull, the court properly gave a peremptory instruction in favor of the defendant where the plaintiff presented no evidence demonstrating that the defendant was negligent in the construction or maintenance of the fence around the field from which the bull escaped and the defendant presented extensive evidence pertaining to the construction and maintenance of the fence. Harris v. Penn, 798 So. 2d 544, 2001 Miss. App. LEXIS 7 (Miss. Ct. App. 2001).

RESEARCH REFERENCES

ALR.

Liability of owner or operator of vehicle for damage to motor vehicle or injury to person riding therein resulting from collision with domestic animal at large in street or highway. 21 A.L.R.4th 159.

Liability for damage to motor vehicle or injury to person riding therein from collision with runaway horse, or horse left unattended or untied in street. 49 A.L.R.4th 653.

Liability for personal injury or death caused by trespassing or intruding livestock. 49 A.L.R.4th 710.

Am. Jur.

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Form 57.1 (complaint, petition, or declaration – cow on highway – violation of statute – damage to vehicle – loss of wages or profit).

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Form 60.1, (answer – affirmative defense – suit by owner of damaged vehicle – negligence of plaintiff).

CJS.

3B C.J.S., Animals §§ 328 et seq.

§ 69-13-113. State or county not liable for injury to impounded livestock.

Neither the state nor any county shall be liable for any injury which may occur to livestock which is picked up and removed from the highways and highway right-of-ways and impounded, or which may be sold under the provisions of this article.

HISTORY: Codes, 1942, § 4876-03.5; Laws, 1958, ch. 463, § 3.

§ 69-13-115. Penalty for removal of impounded livestock without paying fees.

Any person who wrongfully removes impounded livestock from the enclosure provided by the board of supervisors under this article, without paying all fees and assessments against same, shall be guilty of a misdemeanor and, upon conviction, shall be punished as in other cases provided.

HISTORY: Codes, 1942, § 4876-04; Laws, 1956, ch. 140, § 4, eff from and after six months after passage (approved April 5, 1956).

§ 69-13-117. Nature and construction of article.

This article is cumulative and in addition to all other livestock laws and does not repeal any presently existing laws with reference to the powers and duties of the county ranger of the law on estrays. This article shall be liberally interpreted in order to accomplish its purpose and it shall not be interpreted to repeal any law unless specifically so provided herein.

HISTORY: Codes, 1942, § 4876-07; Laws, 1956, ch. 140, § 7, eff from and after six months after passage (approved April 5, 1956).

ARTICLE 5.

HIGHWAY FENCING LAW.

Sec.
69-13-201. Title of article.
69-13-203. Intent of article.
69-13-205. Authority and duty of supervisors.
69-13-207. Tax; authority of supervisors to levy.
69-13-209. Tax; election; use of proceeds; authority of supervisors where tax not authorized.
69-13-211. No reimbursement under Homestead Exemption Law.

§ 69-13-201. Title of article.

This article shall be known as the “Highway Fencing Law.”

HISTORY: Codes, 1942, § 4876.7; Laws, 1956, ch. 185, §§ 1-7; Laws, 1958, ch. 221, §§ 1-6.

§ 69-13-203. Intent of article.

It is the intent of this article to vest the boards of supervisors of the several counties of the state with broad discretion and power of determining the location and types of fences and cattlegaps on the highways referred to in Section 69-13-205.

HISTORY: Codes, 1942, § 4876.7; Laws, 1956, ch. 185, §§ 1-7; Laws, 1958, ch. 221, §§ 1-6.

§ 69-13-205. Authority and duty of supervisors.

The respective boards of supervisors of the several counties of the state, in their discretion, are authorized and directed to erect, construct and maintain suitable fences and cattlegaps along the right of ways of United States Highways and state designated highways to prevent livestock from running at large as provided hereinafter. However, nothing in this article shall apply in any county coming under the state stock law.

The board of supervisors in any county having voted to come within the provisions of the statewide stock law, may maintain any fence or fences constructed under the authority of this article from any funds not public funds, donated by any person, firm or corporation for said purposes and further, may receive and accept funds from the Mississippi State Highway Commission for the relocation of said fence or fences required by said commission. In its discretion and in the alternative, said board may authorize any person, firm or corporation to maintain said fence or fences.

HISTORY: Codes, 1942, § 4876.7; Laws, 1956, ch. 185, §§ 1-7; Laws, 1958, ch. 221, §§ 1-6.

Editor's Notes — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

RESEARCH REFERENCES

ALR.

Liability of governmental entity for damage to motor vehicle or injury to person riding therein resulting from collision between vehicle and domestic animal at large in street or highway. 52 A.L.R.4th 1200.

§ 69-13-207. Tax; authority of supervisors to levy.

The boards of supervisors in said counties are hereby authorized and empowered in their discretion to levy a tax on the taxable property in said counties lying outside municipalities not exceeding two mills per annum thereon for the purpose of paying the cost of construction and maintenance of such fences and cattlegaps. In order to raise additional revenue for the purpose of paying the cost of construction and maintaining such fences and cattlegaps, the board of supervisors in those counties which have heretofore elected not to come under the statewide livestock law may in their discretion levy a tax against the owners of cattle permitted to roam at large in the amount of twenty-five cents (25¢) per head for cattle located in the respective counties in which an election has carried.

HISTORY: Codes, 1942, § 4876.7; Laws, 1956, ch. 185, §§ 1-7; Laws, 1958, ch. 221, §§ 1-6.

Cross References — Exemption of homestead from taxation, see §§ 27-33-1 et seq.

§ 69-13-209. Tax; election; use of proceeds; authority of supervisors where tax not authorized.

Before said board of supervisors is authorized to levy the aforesaid tax or erect such fences, it shall first be necessary that an election be held in each of such counties in accordance with the laws governing general election so far as possible to determine by majority vote of those voting in such election whether such tax shall be levied or such fences erected. And in said election only those electors outside the corporate limits of municipalities shall be eligible to vote. In the event the election is carried, such boards are authorized to construct such fences by use of convict labor, the funds derived from such tax, and with such aid as may be donated or contributed in material, labor or funds toward the erection of said fences and cattlegaps. In the event that the tax be not authorized at such election the board may nevertheless, in their discretion, erect such fences and cattlegaps by use of convict labor and such donations of labor, funds or materials as may be available, but shall not use public funds therefor.

In addition thereto, the counties bordering on the Gulf of Mexico now authorized by law to levy and collect a sea wall tax under Section 65-33-47, Mississippi Code of 1972, may use such proceeds of this tax as required to construct and maintain said fences and cattlegaps, but not to exceed one-half (½) mill of said sea wall tax.

HISTORY: Codes, 1942, § 4876.7; Laws, 1956, ch. 185, §§ 1-7; Laws, 1958, ch. 221, §§ 1-6.

§ 69-13-211. No reimbursement under Homestead Exemption Law.

No reimbursement shall be made under the Homestead Exemption Law of 1946 for any tax levy made under the provisions of this article.

HISTORY: Codes, 1942, § 4876.7; Laws, 1956, ch. 185, §§ 1-7; Laws, 1958, ch. 221, §§ 1-6.

Cross References — Homestead Exemption Law, see §§ 27-33-1 et seq.

ARTICLE 7.

ESTRAYS.

Sec.	
69-13-301.	Estrays to be taken up, posted, and ranger notified.
69-13-303.	Appraisement and description of estrays.
69-13-305.	Registering and advertising estrays.
69-13-307.	Estray may be used by taker up.
69-13-309.	Estray suitable for food slaughtered.
69-13-311.	Death or escape of estrays reported.
69-13-313.	Estrays to be sold if not claimed.
69-13-315.	How owner may prove and reclaim.
69-13-317.	Time allowed owner to claim and prove property.
69-13-319.	Owner of estray sold entitled to net proceeds.
69-13-321.	Ranger may seize estray not delivered according to law.
69-13-323.	Date and amount of sale noted on register and paid to county treasurer.
69-13-325.	Ranger's books open to inspection.
69-13-327.	Ranger to administer oaths.
69-13-329.	Authority of person other than county ranger as to estrays; fees.
69-13-331.	Stallion suffered to run at large may be gelded.
69-13-333.	Not lawful for drover to drive animals from range; penalty.
69-13-335.	Penalty on ranger for failure of duty.
69-13-337.	Penalty for violating the law as to estrays.
69-13-339.	Impounding of livestock illegally roaming on state military reservation; lien; sale of unclaimed animals.

§ 69-13-301. Estrays to be taken up, posted, and ranger notified.

When a person shall find any horse, mule, jack, cattle, sheep, goat or hog straying upon his land, he may take up such animal, and, if the owner be known, he shall forthwith send the estray to the owner or notify him of the taking up of same. If the owner shall be unknown the person taking up such animal straying, shall forthwith post up a notice thereof, with a full description of the animal, in two public places in the supervisor's district, and at the courthouse door, for five days, at the expiration of which time, if an owner shall not have claimed the property and paid the charges allowed by law, he shall give information thereof to the ranger, or, if he reside more than ten miles distant, or if there should be no ranger, to a justice of the peace; and shall make oath before such justice or ranger that such animal was taken up straying at or on his farm or land, or the farm of which he has charge, and that the brands or marks of the animal have not been altered or defaced since the taking up.

HISTORY: Codes, Hutchinson's 1848, ch. 12, art. 1 (1); 1857, ch. 32, art. 3; 1871, § 289; 1880, § 899; 1892, § 1715; 1906, § 1893; Hemingway's 1917, § 1541; 1930, § 5449; 1942, § 4877.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Fees for rangers, see § 25-7-41.

Dogs running at large, see § 41-53-11.
Livestock at large on federal or state highway, see §§ 69-13-101 et seq.

RESEARCH REFERENCES

Am. Jur.
2 Am. Jur. Legal Forms 2d, Animals, §§ 20:261 et seq. (estrays).
2 Am. Jur. Legal Forms 2d, Animals § 20:264 (notice – taking-up of estray animal).
1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 71 et seq. (estrays).

CJS.
3B C.J.S., Animals §§ 247 et seq.

§ 69-13-303. Appraisement and description of estrays.

On receiving notice of the taking up of an estray, the ranger or justice of the peace shall issue his summons to two disinterested and competent persons of the neighborhood who, first having been sworn to value and appraise the same truly, shall value and appraise such animal and certify the valuation under their hands, together with a particular description of the kind, marks, brand, stature, color, and age, which certificate shall be returned or transmitted to the ranger within ten days to be registered.

HISTORY: Codes, Hutchinson's 1848, ch. 12, art. 1 (1); 1857, ch. 32, art. 3; 1871, § 289; 1880, § 899; 1892, § 1716; 1906, § 1894; Hemingway's 1917, § 1542; 1930, § 5450; 1942, § 4878.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

RESEARCH REFERENCES

Am. Jur.
2 Am. Jur. Legal Forms 2d, Animals § 20:20:290 (certificate – of appraisers as to value of estray).

CJS.
3B C.J.S., Animals §§ 247 et seq.

§ 69-13-305. Registering and advertising estrays.

The ranger shall keep a book in which he shall register all certificates of estrays delivered or returned to him, and shall file the same in regular order; and without delay, on receipt of such certificate, he shall advertise the same, stating therein the name of the person by whom the estray was taken up and the description and marks thereof, and the amount of the appraisement. If the appraisement exceed twenty dollars, he shall publish the advertisement three weeks in the nearest newspaper; and if the appraisement be less than twenty dollars, such advertisement shall be put up in three public places in the county, one of which shall be at the courthouse door. He shall also make out a correct list of all estrays in his county, and put up the same at the door of the courthouse on the first day of each regular January and July meeting of the board of supervisors, stating therein such as have been proved away or sold, or have escaped or died.

HISTORY: Codes, Hutchinson's 1848, ch. 12, art. 1 (3); 1857, ch. 32, art. 2; 1871, § 288; 1880, § 905; 1892, § 1717; 1906, § 1895; Hemingway's 1917, § 1543; 1930, § 5451; 1942, § 4879.

Cross References — Registration of brands, see § 69-21-101.

§ 69-13-307. Estray may be used by taker up.

Any person taking up estrays may retain possession thereof and use and employ the same in a proper and reasonable manner until claimed or sold according to law, without being liable to the owner thereof, and shall provide such estrays with sufficient wholesome sustenance; and if an animal so taken up die or accidentally get away, the taker up shall not be answerable for the same unless such death or escape be occasioned by ill treatment or neglect. Any person taking up and using an estray under the provisions of this section shall be liable for reasonable hire for the use thereof, to be fixed by the ranger, the same to be set off against the expense of keeping said estray.

HISTORY: Codes, Hutchinson's 1848, ch. 12, art. 1 (9); 1857, ch. 32, art. 5; 1871, § 291; 1880, § 901; 1892, § 1719; 1906, § 1897; Hemingway's 1917, § 1545; 1930, § 5453; 1942, § 4881.

RESEARCH REFERENCES

CJS.

3B C.J.S., Animals §§ 251 et seq.

§ 69-13-309. Estray suitable for food slaughtered.

When an animal fit for food shall be taken up as an estray, and shall become troublesome, the person taking up the animal may have three disinterested citizens summoned by the ranger or a justice of the peace to appraise such estray, and he may kill the same, and pay the amount of the appraisement to the ranger or other person entitled to receive the same.

HISTORY: Codes, 1880, § 901; 1892, § 1721; 1906, § 1899; Hemingway's 1917, § 1547; 1930, § 5455; 1942, § 4883.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

§ 69-13-311. Death or escape of estrays reported.

When any estray shall die or escape, the taker up shall, without delay, make report thereof to the ranger, on oath, who shall make a memorandum of the same on the margin of his book opposite the registry of the certificate of such estray.

HISTORY: Codes, Hutchinson's 1848, ch. 12, art. 1 (4); 1857, ch. 32, art. 5; 1871, § 291; 1880, § 901; 1892, § 1720; 1906, § 1898; Hemingway's 1917, § 1546; 1930, § 5454; 1942, § 4882.

§ 69-13-313. Estrays to be sold if not claimed.

If the estray shall not be claimed and proved within the time allowed and before actual sale, the same shall be sold by the ranger at the courthouse door, for cash, after giving three weeks' notice of the time and place of sale by an advertisement put up in one of the most public places in each supervisor's district, one of which shall be at the courthouse door; and the sale may be made on the first Monday of any month, and between the hours of twelve and four o'clock of the day of the sale; and estray horses, mules, jacks, jennets, and colts over two years old, and work-oxen shall be delivered at the courthouse on the day of sale. All other estrays may be delivered on the premises of the taker up.

HISTORY: Codes, Hutchinson's 1848, ch. 12, art. 1 (6, 11); 1857, ch. 32, art. 6; 1871, § 292; 1880, § 902; 1892, § 1723; 1906, § 1901; Hemingway's 1917, § 1549; 1930, § 5457; 1942, § 4885.

RESEARCH REFERENCES

Am. Jur.

2 Am. Jur. Legal Forms 2d, Animals, § 20:271 (notice and sale of estray by public official).

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 83, 84 (order and notice of sale of estray).

CJS.

3B C.J.S., Animals § 256.

§ 69-13-315. How owner may prove and reclaim.

A person claiming to be the owner of any animal taken up as an estray and posted as herein provided, may make proof of his title by his oath, or otherwise, to the satisfaction of the ranger, who shall thereupon issue his order to the person having the estray in his custody, to deliver the same to such owner on payment of the lawful charges, to be ascertained and stated by the ranger.

HISTORY: Codes, 1857, ch. 32, art. 4; 1871, § 290; 1880, § 900; 1892, § 1718; 1906, § 1896; Hemingway's 1917, § 1544; 1930, § 5452; 1942, § 4880.

RESEARCH REFERENCES

Am. Jur.

2 Am. Jur. Legal Forms 2d, Animals, § 20:268 (notice by owner of intention to prove ownership).

§ 69-13-317. Time allowed owner to claim and prove property.

The owner of all estrays appraised at more than fifty dollars shall be allowed three months; the owners of estrays appraised at twenty dollars and not exceeding fifty dollars, shall be allowed two months; and the owner of estrays valued at less than twenty dollars shall be allowed one month from the date of the certificate of appraisement to claim and prove property to the same.

HISTORY: Codes, Hutchinson's 1848, ch. 12, art. 1 (6); 1857, ch. 32, art. 6; 1871, § 292; 1880, § 902; 1892, § 1722; 1906, § 1900; Hemingway's 1917, § 1548; 1930, § 5456; 1942, § 4884.

§ 69-13-319. Owner of estray sold entitled to net proceeds.

The owner of any animal sold as an estray, may apply to the board of supervisors of the county within three years, and, upon proof of title, the said board shall order the net proceeds of the sale thereof to be refunded to him out of the county treasury.

HISTORY: Codes, Hutchinson's 1848, ch. 12, art. 1 (7); 1857, ch. 32, art. 8; 1871, § 294; 1880, § 910; 1892, § 1729; 1906, § 1907; Hemingway's 1917, § 1555; 1930, § 5463; 1942, § 4891.

§ 69-13-321. Ranger may seize estray not delivered according to law.

The ranger may seize and sell any estray which shall not be delivered according to law, and shall be allowed for such seizure the same fees as a sheriff is entitled to for executing a writ of execution.

HISTORY: Codes, 1880, § 904; 1892, § 1725; 1906, § 1903; Hemingway's 1917, § 1551; 1930, § 5459; 1942, § 4887.

§ 69-13-323. Date and amount of sale noted on register and paid to county treasurer.

The ranger shall note the time and amount of sale in his register opposite the record of the certificate of such estray, and shall forthwith pay over to the depository of the county the net proceeds of such sale, after deducting all lawful charges; and it shall be his duty to make a full report in writing, under oath, to the board of supervisors, at each regular meeting in January and July, of the amount of money received by him on account of the sale of estrays, and a detailed statement of the disposition thereof.

HISTORY: Codes, 1857, ch. 32, art. 7; 1871, § 293; 1880, § 906; 1892, § 1726; 1906, § 1904; Hemingway's 1917, § 1552; 1930, § 5460; 1942, § 4888.

§ 69-13-325. Ranger's books open to inspection.

The books kept by the ranger for the registration of estrays shall be open to the inspection of every person free of charge; and, at the expiration of his office, shall be handed over to his successor; and, when filed, shall be deposited with the clerk of the chancery court of the county, who shall preserve them.

HISTORY: Codes, 1880, § 908; 1892, § 1728; 1906, § 1906; Hemingway's 1917, § 1554; 1930, § 5462; 1942, § 4890.

§ 69-13-327. Ranger to administer oaths.

The ranger is authorized to administer all oaths and take affidavits necessary in the discharge of his duties.

HISTORY: Codes, 1892, § 1732; 1906, § 1909; Hemingway's 1917, § 1557; 1930, § 5465; 1942, § 4893.

§ 69-13-329. Authority of person other than county ranger as to estrays; fees.

A justice of the peace, where there is a county ranger, shall not have authority to do any act concerning estrays, except to take the information from the taker up and to issue the summons for the appraisers; and he shall be entitled to the same fee for such service as the ranger, to be collected and paid over by the ranger; but if there be not a ranger, a justice of the peace may perform all the duties.

HISTORY: Codes, 1892, § 1730; 1906, § 1908; Hemingway's 1917, § 1556; 1930, § 5464; 1942, § 4892.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Fees for justice courts, see § 25-7-25.

Fees for rangers, see § 25-7-41.

§ 69-13-331. Stallion suffered to run at large may be gelded.

If any person shall suffer any stallion above the age of two years to run at large, out of an inclosure, it shall be lawful for any person to confine and geld such stallion, at the risk of the owner; but this section shall not apply to such stallions as are usually kept up, and happen to get out by accident.

HISTORY: Codes, Hutchinson's 1848, ch. 12, art. 1 (14); 1857, ch. 32, art. 15; 1871, § 301; 1880, § 912; 1892, § 1734; 1906, § 1911; Hemingway's 1917, § 1559; 1930, § 5467; 1942, § 4895.

§ 69-13-333. Not lawful for drover to drive animals from range; penalty.

It shall not be lawful for a drover or other person to drive any horse, mule, cattle, hog, or sheep of another from the lands to which the same may belong, whether the same be an estray or not; but it shall be his duty, if any other such stock shall join his, immediately to halt at the nearest convenient place and separate such stock as does not belong to him or to the person for whom he may be employed; and if any person shall violate the provisions of this section, he shall forfeit twenty dollars for every offense, with costs, recoverable before a justice of the peace, by and for the use of any person who will sue for the same, and shall also be liable in damages to the party injured; and when any person employed in driving stock shall violate the provisions of this section, he and his employer shall be liable to the like penalties; but the recovery of such penalty shall not be a bar to indictment for larceny.

HISTORY: Codes, Hutchinson's 1848, ch. 12, art. 1 (12); 1857, ch. 32, art. 14;

1871, § 300; 1880, § 911; 1892, § 1733; 1906, § 1910; Hemingway's 1917, § 1558; 1930, § 5466; 1942, § 4894.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

§ 69-13-335. Penalty on ranger for failure of duty.

For any failure of the ranger to make out and put up a correct list of all the estrays in his county, or to make his report to the board of supervisors as required, the board of supervisors may fine the ranger not less than five nor more than fifty dollars, which may be collected by scire facias and execution.

HISTORY: Codes, 1857, ch. 32, art. 9; 1871, § 295; 1880, § 907; 1892, § 1727; 1906, § 1905; Hemingway's 1917, § 1553; 1930, § 5461; 1942, § 4889.

§ 69-13-337. Penalty for violating the law as to estrays.

If any person shall take up any horse, mare, mule, jack, cattle, sheep, goat or hog as an estray, contrary to the provisions of this article; or if any person, having taken up such animal, shall fail to send it to or notify the owner, if known, or to give information to the ranger as required, or shall fail to perform any duty required of him, or shall abuse such animal, or shall use the same in an unreasonable or improper manner, so that damage shall be done to the owner, or the value of the animal be impaired; or if any person shall take or send away an estray out of this state, or shall trade, sell, or barter the same; or if any taker up shall fail to deliver said estray to the ranger at the courthouse on the day of the sale of said estray, such person shall, for every such offense, be punished as for a misdemeanor, and, in addition thereto, shall be liable to the owner for the value of the animal; and the taker up shall forfeit all compensation for taking up and keeping such estray.

HISTORY: Codes, Hutchinson's 1848, ch. 12, art. 1 (10); 1857, ch. 32, art. 10; 1871, § 296; 1880, § 903; 1892, § 1724; 1906, § 1902; Hemingway's 1917, § 1550; 1930, § 5458; 1942, § 4886.

RESEARCH REFERENCES

CJS.
3B C.J.S., Animals § 291.

§ 69-13-339. Impounding of livestock illegally roaming on state military reservation; lien; sale of unclaimed animals.

(1) The Mississippi Military Department, acting through the training site supervisor at Camp Shelby, is hereby authorized and empowered to take up and impound in a proper enclosure all livestock found roaming at large upon any state-owned or leased lands comprising the state military reservation in Forrest and contiguous counties, in violation of the statewide stock law statutes.

(2) The training site supervisor shall provide a safe and secure enclosure in which such livestock shall be impounded, and will insure that such animals are cared for in a humane manner until removed for such enclosure as hereinafter provided. It shall be unlawful for any owner of livestock or any other person to remove such livestock without the authority of the training site supervisor, and such offense shall be deemed a misdemeanor.

(3) There is hereby created a statutory lien in the amount of the cost of impounding each animal, not to exceed Twenty-five Dollars ($25.00), against each head of cattle, horse or mule, and all other livestock so found upon and impounded upon the state military reservation; and in addition a lien of One Dollar and Fifty Cents ($1.50) per day shall accrue for the feeding and care of each animal so impounded. No animal shall be removed by its owner until the full lien is paid in cash to the training site supervisor, who shall give a receipt for such money paid and account for the same in the manner to be established by the military department. All funds collected under this section shall be forwarded to the adjutant general on or before the fifth day of each month, and such funds shall be expended under his supervision in carrying out the provisions of this section and in making improvements to the military reservation.

(4) The training site supervisor shall publish a monthly notice in one (1) newspaper having general circulation in Forrest County, the general description of the livestock impounded and held on the end of the preceding month, and said notice shall offer the lawful owners the opportunity to claim their livestock by a day and hour certain, but not less than ten (10) days, after paying the full statutory lien imposed. All animals not claimed by the designated date and hour may be sold as a herd to the highest bidder for cash within ten (10) days and a proper receipt shall be given the purchaser and the funds accounted for as provided for in the preceding subsection.

(5) This section is declared to be remedial legislation and is enacted for the purposes of protecting the personal and real property of the state military reservation known as Camp Shelby from livestock illegally thereon, and enhancing the safety of members of the National Guard and other reserve military forces of Mississippi and other states which train and conduct military exercises and maneuvers on said lands; and neither the training site supervisor, nor any other public employee, shall be liable in any civil or criminal court in carrying out the provisions of this section. The purchasers of livestock under the provisions of this section shall receive a valid title, and such purchaser shall not be liable in a civil or criminal court to any person for any purchase made under this section.

HISTORY: Codes, 1942, § 4895.5; Laws, 1968, ch. 485; Laws, 1981, ch. 319, § 1, eff from and after July 1, 1981.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 15.

BOARD OF ANIMAL HEALTH; LIVESTOCK AND ANIMAL DISEASES

Article 1.	Mississippi Board of Animal Health.	69-15-1
Article 2.	Administrative Procedures to Enforce Rules and Regulations of Board of Animal Health.	69-15-51
Article 3.	General Provisions for Control and Eradication of Livestock and Animal Diseases.	69-15-101
Article 5.	Cattle Tuberculosis.	69-15-201
Article 7.	Eradication of Cattle Ticks and Other Animal Parasites.	69-15-301
Article 9.	Penalties.	69-15-331

ARTICLE 1.

MISSISSIPPI BOARD OF ANIMAL HEALTH.

Sec.	
69-15-1.	Repealed.
69-15-2.	Membership of board; appointments; terms; vacancies; advisory council.
69-15-3.	Office space; adoption of rules and regulations.
69-15-5.	Compensation of members of board.
69-15-7.	Employees; authority to employ professional, technical and clerical personnel; appointment of state veterinarian; bond; use of attorney.
69-15-9.	Powers of Board, State Veterinarian, officers and agents; entry upon premises to inspect and disinfect; liability; control, prevention, eradication, inspection and monitoring of chronic wasting disease and other contagious diseases of exotic cervids or livestock.
69-15-11.	Veterinary Diagnostic Laboratory; services of laboratory; fees for services; qualifications of director and staff; advisory council; meetings; funds and property transfer to College of Veterinary Medicine.
69-15-13.	Appointment of federal personnel as inspectors; acceptance of federal assistance.
69-15-15.	Quarantine for anthrax.
69-15-17.	Repealed.
69-15-19.	Animal Care Fund.

§ 69-15-1. Repealed.

Repealed by Laws of 1998, ch. 570, § 8, eff from and after July 1, 1998.

§ 69-15-1. [Codes, Hemingway's 1917, §§ 5490, 5491; 1930, §§ 5412, 5413; 1942, § 4835; Laws, 1908, ch. 106; Laws, 1919, ch. 227; Laws, 1926, ch. 264; Laws, 1944, ch. 246, §§ 1-3; Laws, 1948, ch. 198, §§ 1, 2 (subd. 1, 2); Laws, 1950, ch. 191 (subd. 2); Laws, 1956, ch. 137 (subd. 2); Laws, 1958, ch. 158; Laws, 1962, ch. 163; Laws, 1966, ch. 230; Laws, 1966, ch. 445, § 9; Laws, 1968, ch. 242, § 1; Laws, 1990, ch. 519, § 1]

Editor's Notes — Former § 69-15-1 provided for membership of the Board of Animal Health, terms of office, and filling of vacancies. See, now, § 69-15-2.

§ 69-15-2. Membership of board; appointments; terms; vacancies; advisory council.

(1) The Mississippi Board of Animal Health is to be composed of the Commissioner of Agriculture and Commerce, the Dean of the College of Veterinary Medicine and the heads of the Animal and Dairy Science and Poultry Science Departments at Mississippi State University of Agriculture and Applied Science and one (1) person appointed by the President of Alcorn State University from its land grant staff as five (5) ex officio members with full voting rights, and ten (10) other members of the board to be appointed by the Governor as hereinafter provided. The board shall select annually a chairman and vice chairman from any members of the board.

(2) The Governor, with the advice and consent of the Senate, shall appoint eleven (11) other members from the following groups or associations from a written list of recommendations from such groups or associations:

One (1) licensed and practicing veterinarian who holds a Doctor of Veterinary Medicine Degree, from a written list of three (3) recommendations submitted by the Mississippi State Veterinary Medical Association;

One (1) general farmer from a written list of three (3) recommendations submitted by the Mississippi Farm Bureau Federation;

One (1) poultry breeder and producer from a written list of three (3) recommendations submitted by the Mississippi Poultry Association;

One (1) small ruminant breeder and producer from a written list of three (3) recommendations, one (1) recommendation submitted by each of the following: the Mississippi Sheep Producers' Association, the Mississippi Club Goat Association, and the Mississippi Goat Association. If an association fails to timely submit its recommendation, the Governor may appoint the member from the list of recommendations submitted by the other associations;

One (1) beef cattle breeder and producer from a written list of three (3) recommendations submitted by the Mississippi Cattlemen's Association;

One (1) swine breeder and producer from a written list of three (3) recommendations submitted by the Mississippi Pork Producers' Association;

One (1) dairy breeder and producer from a written list of three (3) recommendations submitted by the American Dairy Association of Mississippi;

One (1) horse breeder and producer from a written list of four (4) recommendations, one (1) recommendation submitted by each of the following: the Mississippi Quarter Horse Association, Tennessee Walking Horse Association, Mississippi Cutting Horse Association and Mississippi State Equine Association. If an association fails to timely submit its recommendation, the Governor may appoint the member from the list of recommendations submitted by the other associations;

One (1) catfish breeder and producer from a written list of three (3) recommendations submitted by the Mississippi Catfish Association;

One (1) member of the Mississippi Livestock Auction Association from a written list of three (3) recommendations submitted by the Mississippi Livestock Auction Association.

All members shall take and subscribe to the general oath of office as provided in Section 268, Mississippi Constitution of 1890, and file the same with the Commissioner of Agriculture and Commerce.

(3) Effective August 1, 1968, the dairy producer member shall be appointed for a one-year term; the Livestock Auction Association member shall be appointed for a two-year term; and the meat packer member shall be appointed for a three-year term; the catfish producer member shall be appointed for a four-year term; and the horse producer member shall be appointed for a five-year term.

Effective August 1, 1969, the poultry producer member shall be appointed for a two-year term; on August 1, 1970, the sheep producer member shall be appointed for a three-year term; on August 1, 1971, the swine producing member shall be appointed for a four-year term; on August 1, 1972, the general farmer member shall be appointed for a five-year term; on August 1, 1973, the veterinarian member shall be appointed for a six-year term; and on August 1, 1974, the beef cattle producer member shall be appointed for a seven-year term.

All subsequent appointments shall be for four-year terms, except for appointments to fill vacancies which shall be for the unexpired term only.

(4)(a) "Commissioner" means the Commissioner of Agriculture and Commerce.

(b) "Department" means the Department of Agriculture and Commerce.

(5) On or before July 1, 1998, the board shall appoint, from a written list of not less than three (3) licensed veterinarians submitted by the commissioner, the State Veterinarian.

(6) There is created an advisory council to advise the Board of Animal Health on matters concerning the board. The council shall be composed of the Chairman of the Senate Agriculture Committee, the Chairman of the House Agriculture Committee, and one (1) appointee of the Lieutenant Governor and one (1) appointee of the Speaker of the House of Representatives. The members of the advisory council shall serve in an advisory capacity only. For attending meetings of the council, such legislators shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts provided for committee meetings when the Legislature is not in session; however, no per diem or expenses for attending meetings of the council shall be paid while the Legislature is in session. No per diem and expenses shall be paid except for attending meetings of the council without prior approval of the proper committee in their respective houses.

HISTORY: Laws, 1998, ch. 570, § 1; reenacted without change, Laws, 1999, ch. 509 § 1; reenacted without change, Laws, 2003, ch. 352, § 1, eff from and after July 1, 2003; Laws, 2008, ch. 529, § 1; Laws, 2017, ch. 305, § 1, eff from and after passage (approved Mar. 6, 2017).

Cross References — Powers of Governor, generally, see § 7-1-5.
Powers of State Board of Animal Health, see § 69-15-301.
Penalties for violating any provision of this article, see § 69-15-331.

OPINIONS OF THE ATTORNEY GENERAL

There is no authority in the enabling legislation, Section 69-15-1 et seq., for the Board of Animal Health to send personnel to the County Fair to perform drug testing of horses for purposes of ensuring compliance with horse racing rules. Spell, February 16, 1996, A.G. Op. #96-0065.

The Mississippi Board of Animal Health can accept donations pursuant to Section 7-1-7. Watson, Feb. 24, 2006, A.G. Op. 06-0050.

RESEARCH REFERENCES

CJS.

3B C.J.S., Animals §§ 130 et seq.

§ 69-15-3. Office space; adoption of rules and regulations.

The Department of Finance and Administration shall provide office space at the seat of the government, as it deems necessary and requisite for the Board of Animal Health. The board shall adopt rules and regulations as it deems proper to carry out its statutory powers and duties. The rules and regulations shall also prescribe the dates and hours of meetings to be held once a quarter and provide that special meetings shall be called by the chairman at the request of the Commissioner of Agriculture and Commerce, on three (3) days' written notice or by a majority vote of the entire board on three (3) days' written notice.

HISTORY: Codes, Hemingway's 1917, §§ 5490, 5491; 1930, §§ 5412, 5413; 1942, § 4835; Laws, 1908, ch. 106; Laws, 1919, ch. 227; Laws, 1926, ch. 264; Laws, 1944, ch. 246, §§ 1-3; Laws, 1948, ch. 198, §§ 1, 2 (subd. 1, 2); Laws, 1950, ch. 191 (subd. 2); Laws, 1956, ch. 137 (subd. 2); Laws, 1958, ch. 158; Laws, 1962, ch. 163; Laws, 1966, ch. 230; Laws, 1966, ch. 445, § 9; Laws, 1968, ch. 242, § 1; Laws, 1998, ch. 570, § 2; Laws, 2017, ch. 305, § 2, eff from and after passage (approved Mar. 6, 2017).

Cross References — Quarantine in event of anthrax, see § 69-15-15.

RESEARCH REFERENCES

CJS.

3B C.J.S., Animals §§ 130 et seq.

§ 69-15-5. Compensation of members of board.

The members of the Board of Animal Health who are not full-time public officers or public employees shall be entitled to a per diem as is provided by Section 25-3-69, Mississippi Code of 1972, not to exceed twenty (20) days in any fiscal year. All members shall be entitled to mileage and actual and necessary expenses in attending such regular or special meetings, as provided by Section 25-3-41.

HISTORY: Codes, Hemingway's 1917, §§ 5490, 5491; 1930, §§ 5412, 5413; 1942,

§ 4835; Laws, 1908, ch. 106; Laws, 1919, ch. 227; Laws, 1926, ch. 264; Laws, 1944, ch. 246, §§ 1-3; Laws, 1948, ch. 198, §§ 1, 2 (subd. 1, 2); Laws, 1950, ch. 191 (subd. 2); Laws, 1956, ch. 137 (subd. 2); Laws, 1958, ch. 158; Laws, 1962, ch. 163; Laws, 1966, ch. 230; Laws, 1966, ch. 445, § 9; Laws, 1968, ch. 242, § 1; Laws, 1981, ch. 401, § 1; reenacted without change, Laws, 2003, ch. 352, § 3, eff from and after July 1, 2003.

OPINIONS OF THE ATTORNEY GENERAL

While Miss. Code Ann. Section 69-15-5 (1972) provides specific authority to reimburse members of the Mississippi Board of Animal Health for travel and mileage expenses, and that employees of the agency are entitled to travel expenses under Section 23-5-41 [Repealed], MBAH has no authority to pay travel expenses to volunteers, or to pay a volunteer for the expenses of running the volunteer's business or professional practice while attending Mississippi Animal Response Team training. Watson, Feb. 3, 2006, A.G. Op. 06-0005.

The Mississippi Board of Animal Health has no authority to pay travel expenses to volunteers, and there is no statutory authority for the agency to pay a volunteer for the expenses of running the volunteer's business or professional practice while attending Mississippi Animal Response Team training. Watson, Feb. 24, 2006, A.G. Op. 06-0050.

§ 69-15-7. Employees; authority to employ professional, technical and clerical personnel; appointment of state veterinarian; bond; use of attorney.

The State Veterinarian is authorized and empowered to employ the necessary professional, technical and clerical personnel as he deems necessary to carry out the powers and duties of the board, and to fix their compensation. The board shall appoint from a written list of not less than three (3) licensed veterinarians submitted by the Commissioner of Agriculture and Commerce, a duly licensed and practicing veterinarian as the State Veterinarian, who shall hold a Degree of Veterinary Medicine from a recognized college or university and shall have been engaged in the practice of veterinary science for not less than ten (10) years prior to his appointment. The State Veterinarian shall serve at the will and pleasure of the board and shall enter into a surety bond for the faithful performance of his duties, and the premium therefor shall be paid by the board. The board shall also be authorized to employ an attorney as authorized in Section 69-1-14, Mississippi Code of 1972.

HISTORY: Codes, Hemingway's 1917, §§ 5490, 5491; 1930, §§ 5412, 5413; 1942, § 4835; Laws, 1908, ch. 106; Laws, 1919, ch. 227; Laws, 1926, ch. 264; Laws, 1944, ch. 246, §§ 1-3; Laws, 1948, ch. 198, §§ 1, 2 (subd. 1, 2); Laws, 1950, ch. 191 (subd. 2); Laws, 1956, ch. 137 (subd. 2); Laws, 1958, ch. 158; Laws, 1962, ch. 163; Laws, 1966, ch. 230; Laws, 1966, ch. 445, § 9; Laws, 1968, ch. 242, § 1; Laws, 1983, ch. 365, § 5; Laws, 1990, ch. 519, § 2; Laws, 1998, ch. 570, § 3, eff from and after July 1, 1998; reenacted without change, Laws, 1999, ch. 509, § 3; reenacted without change, Laws, 2003, ch. 352, § 4, eff from and after July 1, 2003.

§ 69-15-9. Powers of Board, State Veterinarian, officers and agents; entry upon premises to inspect and disinfect; liability; control, prevention, eradication, inspection and monitoring of chronic wasting disease and other contagious diseases of exotic cervids or livestock.

(1)(a) The Board of Animal Health shall have plenary power to deal with all contagious and infectious diseases of animals as in the opinion of the board may be prevented, controlled or eradicated, and with full power to make, promulgate and enforce such rules and regulations as in the judgment of the board may be necessary to control, eradicate and prevent the introduction and spread of anthrax, tuberculosis, hog cholera, Texas and splenic fever and the fever-carrying tick (margaropus annulatus), cattle brucellosis, anaplasmosis, infectious bovine rhinotracheitis, muscosal disease, cattle viral diarrhea, cattle scabies, sheep scabies, hog cholera, swine erysipelas, swine brucellosis, equine encephalomyelitis, rabies, vesicular diseases, salmonella group, newcastle disease, infectious laryngotracheitis, ornithosis-psittacosis, mycoplasma group, chronic wasting disease and any suspected new and/or foreign diseases of livestock and poultry and all other diseases of animals in this state, and the board is hereby vested with full authority to establish and maintain quarantine lines and to quarantine by county, supervisors district, parcel of land or herd. The State Veterinarian shall appoint as many inspectors and range riders as may be deemed necessary, and the funds at his disposal will permit, and shall delegate authority to said inspectors and range riders, to enter premises to inspect and disinfect livestock and premises, and enforce quarantine including counties, farms, pens, stables and other premises.

(b) No veterinarian may provide veterinary services for the control, eradication or prevention of diseases in animals at a stockyard, livestock auction, equine sale or other place or event of livestock trading unless he has first been approved by the board for this purpose. The board shall have the authority to adopt rules and regulations as may be necessary or desirable to carry out the purposes of this paragraph.

(2) No officer or agent of the State Veterinarian may enter the actual enclosures of any person except with the consent of the person lawfully in possession thereof or in the absence of such consent, with a proper writ obtained as in other cases of searches and seizures under constitutional law. When such officers and agents are lawfully on the premises, either by permission or writ, they shall be authorized to inspect the premises and the livestock and animals found thereon by entering the enclosures and buildings and they are authorized to check livestock and poultry found therein for any contagious diseases and take proper action to control or eradicate any such diseases that may be found. While such officers and agents are performing their duties hereunder, they shall not be personally liable except for gross negligence. The refusal without lawful reason of any person to give the consent aforesaid shall be deemed a misdemeanor and shall be punishable as for violations of Article 5 of this chapter as provided for in Section 69-15-115.

The Board of Animal Health shall administer the special fund created in Section 69-15-19.

(3)(a) The Board of Animal Health shall have plenary power to control, prevent, eradicate, inspect and monitor chronic wasting disease or other contagious disease of exotic cervids or other exotic livestock. It shall be the duty of the board to develop an inspection, testing and monitoring program for such diseases.

(b) An officer or agent of the State Veterinarian is authorized to enter any facility containing cervids or other exotic livestock to inspect the premises and the cervids or exotic livestock. Such officer or agent may inspect, monitor or test any cervid or exotic livestock for disease and may take proper action to control or eradicate any diseases found. While such officers or agents are performing their duties, they shall not be personally liable, except for gross negligence.

(c) As a condition of maintaining a permit for a cervid or other exotic livestock facility, it shall be the duty of the permittee to allow the agents of the State Veterinarian to enter the facility and to conduct inspections and tests.

(4) As a condition of maintaining a permit for a cervid or other exotic livestock facility, the permittee shall immediately notify the State Veterinarian upon discovery of the escape of a cervid or exotic livestock. Any such animal shall be treated as an escaped wild animal and may be disposed of accordingly.

HISTORY: Codes, Hemingway's 1917, § 5492; 1930, § 5414; 1942, § 4837; Laws, 1908, ch. 106; Laws, 1926, ch. 264; Laws, 1928, ch. 61; Laws, 1962, ch. 166, § 1; Laws, 1998, ch. 570, § 4; reenacted without change, Laws, 1999, ch. 509, § 4; Laws, 2000, ch. 536, § 7; Laws, 2003, ch. 352, § 5; Laws, 2003, ch. 516, § 3; Laws, 2011, ch. 384, § 1, eff from and after passage (approved Mar. 14, 2011).

Editor's Notes — Laws of 2003, ch. 516, § 11, provides:

"SECTION 11. Pursuant to Section 1-3-79, Mississippi Code of 1972, the amendments to Section 69-15-9, Mississippi Code of 1972, contained in Laws, 2003, Chapter 516, shall supersede the reenacted section contained in Laws 2003, Chapter 352."

Cross References — Composition of board, see § 69-15-2.

Animal Care Fund, see § 69-15-19.

Administrative procedures to enforce rules and regulations of Board of Animal Health, see §§ 69-15-51 et seq.

Regulation of drugs for animals, see § 69-17-1.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Construction and application.

1. Validity.

This statute is constitutional. Moss v. Mississippi Live Stock Sanitary Board, 154 Miss. 765, 122 So. 776, 1929 Miss. LEXIS 176 (Miss. 1929).

Livestock owners violating law requiring dipping of animals to eradicate fever tick were not entitled to protection of equity because of threatened invasion of constitutional right. Moss v. Mississippi Live Stock Sanitary Board, 154 Miss. 765, 122 So. 776, 1929 Miss. LEXIS 176 (Miss. 1929).

Chapter 106 Laws 1908, a former statute, was not invalid as a delegation of legislative functions. Abbott v. State, 106 Miss. 340, 63 So. 667, 1913 Miss. LEXIS 139 (Miss. 1913).

2. Construction and application.

Court of equity is without power to order slaughter of oxen infected with tuberculosis where statute relating to appraisal was not complied with. Mississippi Live Stock Sanitary Board v. Broadus, 181 Miss. 122, 178 So. 787, 1938 Miss. LEXIS 54 (Miss. 1938).

In prosecution for moving cattle from Louisiana to Mississippi, evidence that copies of necessary Federal certificates authorizing such movement were customarily mailed to Mississippi Livestock Board, and that secretary thereof had been unable to find copy of any certificate issued to defendant, was insufficient for jury in absence of proof of any law or regulation requiring Federal authorities to file copies of Federal certificates with Mississippi Livestock Board. Calhoun v. State, 172 Miss. 559, 161 So. 297, 1935 Miss. LEXIS 182 (Miss. 1935).

Tick eradication statutes did not authorize entry on owner's premises and seizure of livestock on refusal to dip. Gilbert v. Crosby, 160 Miss. 711, 135 So. 201, 1931 Miss. LEXIS 217 (Miss. 1931).

Writ authorizing seizure of livestock on owner's refusal to dip under tick eradication statutes was void, rendering sheriff liable for civil trespass. Gilbert v. Crosby, 160 Miss. 711, 135 So. 201, 1931 Miss. LEXIS 217 (Miss. 1931).

The state livestock sanitary board could sue only by officers designated by the statute. Mississippi Live Stock Sanitary Bd. v. Williams, 133 Miss. 98, 97 So. 523, 1923 Miss. LEXIS 118 (Miss. 1923), overruled, Pruett v. City of Rosedale, 421 So. 2d 1046, 1982 Miss. LEXIS 2273 (Miss. 1982).

Section 3, ch. 106 Laws 1908, a former statute, did not make it a misdemeanor to refuse to dip cattle infected with tick fever as provided by rules of the live stock board. Abbott v. State, 106 Miss. 340, 63 So. 667, 1913 Miss. LEXIS 139 (Miss. 1913).

RESEARCH REFERENCES

ALR.

Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

CJS.

3B C.J.S., Animals §§ 130 et seq.

§ 69-15-11. Veterinary Diagnostic Laboratory; services of laboratory; fees for services; qualifications of director and staff; advisory council; meetings; funds and property transfer to College of Veterinary Medicine.

(1) The College of Veterinary Medicine at Mississippi State University of Agriculture and Applied Science shall maintain a complete and adequate veterinary diagnostic laboratory in the Jackson vicinity and any person licensed to practice veterinary medicine, veterinary surgery, veterinary dentistry, or any vocational-agriculture teacher, bona fide farmer or county agent in the State of Mississippi or agent of the State Veterinarian shall have made available to him services of the laboratory. The laboratory shall examine and conduct laboratory tests on specimens submitted by any licensed veterinarian, or vocational-agriculture teacher, bona fide farmer or county agent of this state or agent of the State Veterinarian and issue appropriate reports. The College of Veterinary Medicine shall be required to set reasonable fees for such examinations, tests, reports or other diagnostic service.

(2) The College of Veterinary Medicine shall select a director of the laboratory who holds a degree of veterinary medicine from a recognized college or university; is board certified in one (1) of the following basic diagnostic disciplines; toxicology, pathology, microbiology, virology or clinical pathology and has engaged in the practice of veterinary clinical diagnosis for at least ten (10) years, five (5) years of which were in a supervisory capacity. The director shall select and recommend for employment such veterinarians, bacteriologists, pathologists, technicians, clerical assistants, and other personnel necessary to carry out the objective of this section. The salaries, compensation and expenses of such employees shall be sufficient to insure the employment of competent persons and shall be paid from funds at the disposal of the Veterinary Diagnostic Laboratory. The director shall be responsible to the College of Veterinary Medicine for the daily operations of the laboratory.

(3) There is created an advisory council to advise the College of Veterinary Medicine on matters concerning the Veterinary Diagnostic Laboratory. The council shall be composed of the Chairman of the Senate Agriculture Committee, or his designee; the Chairman of the House Agriculture Committee, or his designee; the Chairman of the Board of Animal Health; the Commissioner of Agriculture and Commerce; a person appointed by the President of Alcorn State University from its land grant staff who is not a member of the Board of Animal Health; a licensed and practicing veterinarian appointed by the President of the Mississippi State Veterinary Medical Association who is not a member of the Board of Animal Health; the State Veterinarian; the State Chemist; and the Dean of the College of Veterinary Medicine. This advisory council shall meet at least twice a year, upon written notification at least fourteen (14) days in advance, to be called by the Dean of the College of Veterinary Medicine. A meeting may also be called by the Commissioner of Agriculture or by a majority of the advisory council with fourteen (14) days' written notice.

The members of the advisory council shall serve in an advisory capacity only. For attending meetings of the council, legislators shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts provided for committee meetings when the Legislature is not in session; however, no per diem or expenses for attending meetings of the council shall be paid while the Legislature is in session. No per diem and expenses shall be paid except for attending meetings of the council without prior approval of the proper committee in their respective houses.

(4) All funds, property and other assets and all current positions of the diagnostic laboratory shall be transferred to the College of Veterinary Medicine on July 1, 2002. The budget of the Veterinary Diagnostic Laboratory shall be funded as a separate line item within the general appropriation bill for the College of Veterinary Medicine.

(5) Information and records pertaining to all animal diseases within the state will be kept confidential except for those reports concerning diseases that are specifically regulated for mandatory control and eradication, or when

release of such information is deemed necessary by the State Veterinarian to protect the public health, other livestock or wildlife.

HISTORY: Codes, 1942, § 4836; Laws, 1944, ch. 246, § 4; Laws, 1950, ch. 194; Laws, 1964, ch. 212; Laws, 1986, ch. 500, § 53; Laws, 1990, ch. 519, § 3; Laws, 1998, ch. 570, § 5; Laws, 2002, ch. 523, § 1; reenacted without change, Laws, 2003, ch. 352, § 6, eff from and after July 1, 2003.

§ 69-15-13. Appointment of federal personnel as inspectors; acceptance of federal assistance.

The State Veterinarian is vested with authority to appoint and commission, without salary from the state, as its inspectors, representatives of the United States Department of Agriculture, and to accept from the United States government such assistance, financial and otherwise, for carrying out the purpose of this statute, as may be available from time to time.

HISTORY: Codes, 1930, § 5415; 1942, § 4838; Laws, 1926, ch. 264; Laws, 1998, ch. 570, § 6, eff from and after July 1, 1998; reenacted without change, Laws, 1999, ch. 509, § 6; reenacted without change, Laws, 2003, ch. 352, § 7, eff from and after July 1, 2003.

§ 69-15-15. Quarantine for anthrax.

(1) The Board of Animal Health shall have the power and duty to quarantine all herds of cattle where a diagnosis of anthrax is made.

(2) Such quarantine shall remain in effect until the State Veterinarian receives a certificate which is signed by a Mississippi licensed and accredited veterinarian, and which states that such herd has been properly treated and vaccinated and that the medical waste and any dead animals from such herd have been properly disposed. The proper disposal of such dead animals shall be by burning the animal at the spot of death or by burying the animal six (6) feet deep and covering the animal with quick lime.

(3) The Board of Animal Health shall have the power and duty to quarantine all herds of cattle on lands immediately adjacent to any infected herd. Such quarantine shall remain in effect until the State Veterinarian receives a certificate as specified in subsection (2) of this section.

(4) Any person, firm or corporation failing to comply with any of the provisions of this section, or interfering with the State Veterinarian or any duly appointed officer of the State Veterinarian in the discharge of his duty or for having discharged his duties, shall be deemed in violation of the provisions of this section and shall be subject to the penalties provided in Section 69-15-65, Mississippi Code of 1972.

HISTORY: Laws, 1992, ch. 345 § 1; Laws, 1998, ch. 570, § 7, eff from and after July 1, 1998; reenacted without change, Laws, 1999, ch. 509, § 7; reenacted without change, Laws, 2003, ch. 352, § 8, eff from and after July 1, 2003.

Cross References — Power of Board of Animal Health to enact regulations for control of anthrax, see § 69-15-9.

RESEARCH REFERENCES

ALR.

Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

Construction of provisions of statute or ordinance governing occasion, time, or manner of summary destruction of domestic animals by public authorities. 42 A.L.R.4th 839.

Am. Jur.

4 Am. Jur. 2d, Animals §§ 103-120.

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 21, 24-26.

CJS.

3B C.J.S., Animals §§ 134 et seq.

§ 69-15-17. Repealed.

Repealed by Laws of 2006, ch. 373, § 1 effective from and after passage March 13, 2006.

§ 69-15-17. [Laws, 1998, ch. 570, § 9(1); Laws, 2003, ch. 352, § 9, eff from and after July 1, 2003.]

Editor's Notes — Former § 69-15-17 repealed §§ 69-15-1 through 69-15-15.

§ 69-15-19. Animal Care Fund.

(1) As used in this section, the term "qualified nonprofit organization" means an IRS tax-exempt 501(c)(3) or similar nonprofit organization that has been approved by the Mississippi Board of Animal Health.

(2) There is created in the State Treasury a special fund to be known and designated as the "Animal Care Fund." There shall be deposited in the fund:

(a) The additional fees collected from the issuance of distinctive license tags under Section 27-19-56.18;

(b) Any gifts, grants, donations or matching money from federal, state or local governmental bodies and private persons, associations, groups or corporations making contributions to the fund; and

(c) Any other monies as the Legislature may appropriate or authorize to be deposited therein.

(3) The special fund created under subsection (1) of this section shall be administered by the Mississippi Board of Animal Health. Monies in the special fund shall be allocated and distributed by the Mississippi Board of Animal Health to and among the boards of supervisors of each of the counties, the governing authorities of municipalities in the state and qualified nonprofit organizations. Monies allocated, distributed and received by the boards of supervisors, governing authorities and qualified nonprofit organizations may:

(a) Be expended for the operation and support of county or municipal agencies, boards or departments that provide food, shelter and care, and/or spaying and neutering of lost, abandoned or unwanted pets;

(b) Be expended for the creation, development or expansion of such agencies, boards or departments; or

(c) Be donated by the boards of supervisors and governing authorities to nonprofit groups, organizations and associations that operate similar programs. However, priority for expenditure of such monies shall be given to spaying and neutering programs. None of such monies may be expended for euthanasia. The Mississippi Board of Animal Health is authorized to use a portion of the fund, in an amount not to exceed Two Thousand Dollars ($2,000.00) a year, to fund administrative expenses.

(4) The Mississippi Board of Animal Health shall adopt rules and regulations governing the proper administration of the Animal Care Fund, and establishing guidelines and criteria for the distribution and allocation of monies in the fund, including qualifications for those groups, organizations and associations qualified to accept monies or to which boards of supervisors and governing authorities may make donations.

HISTORY: Laws, 2000, ch. 536, § 6; Laws, 2007, ch. 358, § 1, eff from and after July 1, 2007.

Cross References — Special "I Care for Animals" license tags or plates, see § 27-19-56.18.

Powers of the Mississippi Board of Animal Health generally, see § 69-15-9.

Federal Aspects— Qualification as tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code, see 26 USCS § 501(c)(3).

ARTICLE 2.

ADMINISTRATIVE PROCEDURES TO ENFORCE RULES AND REGULATIONS OF BOARD OF ANIMAL HEALTH.

Sec.
69-15-51. Purpose.
69-15-53. Procedure following charge of violation; reviewing officer.
69-15-55. Hearing committee; hearing procedure.
69-15-57. Certification of findings and recommendations to Board of Animal Health.
69-15-59. Waiver of right to hearing.
69-15-61. Jurisdiction of Board of Animal Health; authority to adopt rules and regulations.
69-15-63. Judicial review.
69-15-65. Penalties.
69-15-67. Failure to pay penalty.
69-15-69. Immunity for witnesses.

§ 69-15-51. Purpose.

It is the purpose of Sections 69-15-51 through 69-15-69 to establish an administrative hearing procedure under the Board of Animal Health to enforce the rules and regulations of the Board of Animal Health and the statutes and laws of the State of Mississippi pertaining to the control and eradication of tuberculosis, anthrax, hog cholera, Texas and splenic fever and the fever-carrying tick (Margaropus annulatus), cattle brucellosis, anaplasmosis, infectious bovine rhinotracheitis, muscosal disease, cattle viral diarrhea, cattle scabies, sheep scabies, swine erysipelas, swine brucellosis, equine encephalomyelitis, rabies, vesicular diseases, salmonella group, newcastle disease, infectious laryngotracheitis, ornithosis-psittacosis, mycoplasma group, equine infectious anemia and any suspected new and/or foreign diseases of livestock and poultry, and all other diseases of animals in this state, currently in effect or hereafter made and promulgated.

HISTORY: Laws, 1989, ch. 449, § 1, eff from and after passage (approved March 24, 1989).

§ 69-15-53. Procedure following charge of violation; reviewing officer.

(1) When any allegation or charge has been made against a person for violating the rules and regulations of the Board of Animal Health or the law relating to the prevention and eradication of diseases in animals and livestock, the Board of Animal Health shall direct the State Veterinarian to act as the reviewing officer. The reviewing officer shall (a) cause the complaint to be in writing and signed by the person making the charge; (b) insure that the complaint is filed in the office of the Board of Animal Health; and (c) send a copy of the complaint and any supporting documents to the person accused along with a request for the accused to respond to the allegations within thirty (30) days. Such notification shall be accomplished by any of the methods provided for in Rule 4 of the Mississippi Rules of Civil Procedure. Upon receipt of the response and any supporting documents from the accused, the reviewing officer shall screen all information on file to determine the merit of the complaint or lack thereof.

(2) If the reviewing officer determines that the complaint lacks merit, he may dismiss the complaint.

(3) If the reviewing officer determines that there are reasonable grounds to indicate that a violation has occurred or the accused admits to the truth of the allegations upon which the complaint is based, the reviewing officer may levy a fine not to exceed One Thousand Dollars ($1,000.00) for each violation.

(4) If the accused requests a hearing, in writing, within thirty (30) days, the reviewing officer shall notify the Board of Animal Health and a hearing shall be scheduled. The actions of the State Veterinarian with respect to subsections (2) and (3) above shall be reviewable at such hearing, if so requested. The party requesting a hearing shall file a fee of One Hundred Dollars ($100.00) along with the request for hearing to cover the cost of a court reporter.

HISTORY: Laws, 1989, ch. 449, § 2; Laws, 1990, ch. 519, § 4, eff from and after passage (approved April 2, 1990).

§ 69-15-55. Hearing committee; hearing procedure.

(1) The Board of Animal Health, upon notice from the reviewing officer that a hearing is requested, shall appoint a three-member hearing committee which shall consist of one (1) attorney from the Attorney General's office, and

two (2) representatives from the Department of Agriculture or from the membership of the Board of Animal Health. The hearing committee shall, within thirty (30) days of notification from the reviewing officer, conduct a hearing at a date, time and place to be determined by the hearing committee, provided that such hearing shall be held and conducted within the county in which the accused resides or in a situs mutually agreeable and that for good cause shown the hearing committee may grant a continuance or continuances of such hearings. Written notice of date, time and place of such hearing shall be mailed to the accused by registered mail, return receipt requested, no less than fifteen (15) days prior to the commencing of the hearing.

(2) A duly qualified court reporter shall be in attendance and shall make a full and complete transcript of the proceedings. The hearing shall be closed unless the accused shall request a public hearing. The hearing committee shall have the right and duty to impose reasonable restrictions as it may deem necessary or appropriate to insure an orderly, expeditious and impartial proceeding, and shall admit all relevant and material evidence except evidence which is unduly repetitious.

(3) For purposes of such hearing, the committee is hereby empowered to require the attendance of witnesses, administer oaths and hear testimony, either oral or documentary, for and against the accused. The board shall have the authority to issue subpoenas to compel the attendance of witnesses and the production of books, papers, records or other documentary evidence at a hearing pending before the board. Subpoenas to be issued shall be delivered to the sheriff of the county where they are to be executed and the sheriff shall cause them to be served. In case of the failure of any person to comply with any subpoena issued by the board, the board or its authorized representative may invoke the aid of any court of general jurisdiction of this state. The court may thereupon order such person to comply with the requirements of the subpoena. Failure to comply with the order of the court may be treated as contempt thereof.

(4) At the conclusion of the hearing, the hearing committee, upon the majority vote of the members of such committee, shall transmit to the Board of Animal Health a written opinion incorporating findings of fact and recommendations for penalties which shall not exceed One Thousand Dollars ($1,000.00) for each violation.

HISTORY: Laws, 1989, ch. 449, § 3, eff from and after passage (approved March 24, 1989).

§ 69-15-57. Certification of findings and recommendations to Board of Animal Health.

The reviewing officer and/or the hearing committee shall certify findings and recommendations to the Board of Animal Health within five (5) days of the conclusion of the proceedings. The Board of Animal Health shall, at its next regular meeting, review such findings and recommendations and approve, modify or reverse the recommendations made as a result of the review and hearing. The Board of Animal Health shall then notify the accused violator of its decision by certified mail at a mailing address provided during the proceedings, or at the accused violator's last-known address.

HISTORY: Laws, 1989, ch. 449, § 4, eff from and after passage (approved March 24, 1989).

§ 69-15-59. Waiver of right to hearing.

Failure of the accused to request a hearing or respond to the complaint within thirty (30) days shall constitute a waiver of the right to a hearing and any penalties assessed by the board shall be due and payable as provided in Section 69-15-67.

HISTORY: Laws, 1989, ch. 449, § 5, eff from and after passage (approved March 24, 1989).

§ 69-15-61. Jurisdiction of Board of Animal Health; authority to adopt rules and regulations.

The Board of Animal Health shall have jurisdiction over all persons and property necessary to administer and enforce the provisions of Sections 69-15-51 through 69-15-69, the rules and regulations of the board, and all other laws relating to the prevention and eradication of diseases in animals and livestock. The board may adopt rules and regulations to implement the provisions of Sections 69-15-51 through 69-15-69.

HISTORY: Laws, 1989, ch. 449, § 6, eff from and after passage (approved March 24, 1989).

§ 69-15-63. Judicial review.

(1) Any individual aggrieved by a final decision of the Board of Animal Health after its review of the hearing officer's recommendation shall be entitled to judicial review.

(2) An appeal from the board's decision shall be filed in the Circuit Court of the First Judicial District of Hinds County on the record made, including a verbatim transcript of the testimony at the hearing held before the designated hearing committee of the Board of Animal Health. The appeal shall be filed within thirty (30) days after notification of the action of the board is mailed or served and the proceedings in circuit court shall be conducted as other matters coming before the court. The appeal shall be perfected upon filing notice of the appeal and by the prepayment of all costs, including the cost of preparation of the record of the proceedings by the Board of Animal Health, and the filing of a bond in the sum of Five Hundred Dollars ($500.00) conditioned that if the action of the board be affirmed by the circuit court, the aggrieved party shall pay the costs of the appeal and the action of the circuit court.

(3) The scope of review of the circuit court in such cases shall be limited to a review of the record made before the board or hearing committee to determine if the action of the board is unlawful for the reason that it was:

(a) Not supported by any substantial evidence;

(b) Arbitrary or capricious; or

(c) In violation of some statutory or constitutional right of the individual.

(4) No relief shall be granted based upon the court's finding of harmless error by the board in complying with the procedural requirements of Sections 69-15-51 through 69-15-61. In the event that there is a finding of prejudicial error in the proceedings, the cause may be remanded for a rehearing consistent with the findings of the court.

(5) Any party aggrieved by action of the circuit court may appeal to the State Supreme Court in the manner provided by law.

HISTORY: Laws, 1989, ch. 449, § 7, eff from and after passage (approved March 24, 1989).

§ 69-15-65. Penalties.

(1) Each violation of the rules and regulations of the Board of Animal Health or violations of any other of the laws governing the eradication of contagious diseases in animals and livestock shall be subject to the imposition of a civil penalty up to One Thousand Dollars ($1,000.00).

(2) When one or more animals are involved and are the subject of the violation each animal shall constitute a separate violation.

HISTORY: Laws, 1989, ch. 449, § 8, eff from and after passage (approved March 24, 1989).

Cross References — Penalty for violation of provisions pertaining to anthrax quarantine, see § 69-15-15.

Person violating rule or regulation relating to bringing equine into state or local show or sale facility without infectious anemia certificate, as subject to penalties in this section, see § 69-15-117.

§ 69-15-67. Failure to pay penalty.

(1) Any penalty assessed by the Board of Animal Health shall be due and payable within forty-five (45) days of the notification of the board's decision.

(2) In the event that the judgment is not paid within the forty-five (45) days, or within such additional time as the board may allow, the Board of Animal Health through its designated representative may file suit in the circuit court of the county where the defendant resides or in the case of a nonresident defendant in the Circuit Court of the First Judicial District of Hinds County or any other court with appropriate jurisdiction to enforce the decision of the board and recover reasonable attorney's fees and all court costs.

(3) A copy of the notification sent by the board to the violator shall be sufficient proof as to the judgment of the board.

HISTORY: Laws, 1989, ch. 449, § 9, eff from and after passage (approved March 24, 1989).

Cross References — Failure to request hearing resulting in penalty due and payable, see § 69-15-59.

§ 69-15-69. Immunity for witnesses.

No person shall be subject to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter or issue concerning which he may be required to testify to or produce evidence, or provide documentation, before the board or at any of its hearings or conferences, or in compliance with any subpoena, however, no person testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

HISTORY: Laws, 1989, ch. 449, § 10, eff from and after passage (approved March 24, 1989).

ARTICLE 3.

GENERAL PROVISIONS FOR CONTROL AND ERADICATION OF LIVESTOCK AND ANIMAL DISEASES.

Sec.
69-15-101. Areas for control of diseases of livestock and poultry.
69-15-103. Spraying to prevent spread of disease at state fairs and community sale barns.
69-15-105. County or district to establish program to control or eradicate ticks, flies, and other external parasites.
69-15-107. Brucellosis eradication.
69-15-109. Emergency control of foot and mouth disease and other infectious diseases of animals and poultry.
69-15-111. Livestock; how brought into state.
69-15-113. Infected livestock; pay for when destroyed.
69-15-115. Penalties.
69-15-117. All equidae located on premises where public participates in equine activities to be accompanied by copy of negative infectious anemia test; regulations; penalties.

§ 69-15-101. Areas for control of diseases of livestock and poultry.

(1) The boards of supervisors of any county, or one or more counties, are hereby authorized and empowered, in their discretion, to establish areas composed of one or more counties for the purpose of cooperating with the Board of Animal Health and the United States Bureau of Animal Industry, separately or jointly, in providing for a program of control and eradication of certain diseases of livestock and poultry within such area established.

(2) Boards of supervisors of any county or counties acting under the authority conferred by this section are authorized and empowered, in their discretion, to contribute to the support of such area program in an amount equal to thirty-three and one-third per cent of the cost of administering the

program in such area. The cost of administering such program to be determined by the board and entered upon their minutes at the time funds are appropriated for the support of same. The funds herein authorized to be expended by the board or boards of supervisors of each county or group of counties comprising such area shall be paid out of the General Fund of such county or counties on order of the board of supervisors duly entered on their minutes.

(3) The Board of Animal Health is hereby authorized to purchase and supply at cost any vaccine necessary for use in control and eradication of diseases of livestock and poultry in such area hereby authorized to be established, to the owners of livestock or poultry residing in an area cooperating with the control program hereby authorized.

(4) In order that any area created under the provisions of this section may have the services of a veterinarian, the board of animal health is hereby authorized and empowered, in their discretion, to employ a veterinarian for such area, and such area veterinarian shall have the authority to employ local veterinarians with the approval of the board of animal health, and the board of supervisors of the county or counties comprising such area are authorized and empowered to contribute to the payment of the salary of such veterinarians employed by the board of animal health.

HISTORY: Codes, 1942, § 4861.5; Laws, 1948, ch. 197, §§ 1-4.

Cross References — Board of Animal Health, generally, see §§ 69-15-1 et seq.
Penalties for violating any provision of this article, see § 69-15-331.

RESEARCH REFERENCES

Am. Jur.
1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 21 et seq. (destruction of diseased animals).

CJS.
3B C.J.S., Animals §§ 135 et seq.

§ 69-15-103. Spraying to prevent spread of disease at state fairs and community sale barns.

(1) All pens, stalls, barns, or other places where livestock are placed or held for exhibits or shows at all fairs within the state shall be sprayed with an approved insecticide before any animals are placed therein, and immediately after removal of such animals, all such pens, stalls, barns, or other places where such animals have been confined shall be sprayed with an approved disinfectant. Such spraying shall be done under the direction or supervision of the board of animal health. It shall be the duty of the fair managers to see that the provisions hereof are complied with.

(2) All community sale barns within the state where any kind of livestock is sold, shall be sprayed with an approved insecticide before any animals are placed therein and immediately after removal of such animals. Such spraying shall be done at the expense of the owners of said sale barns, and done under directions of the board of animal health. Failure by the owners of said sale

barns to comply with the provisions hereof shall be punished by a fine imposed upon them of not less than Twenty-five Dollars ($25.00), nor more than Fifty Dollars ($50.00).

HISTORY: Codes, 1942, § 4861.7; Laws, 1948, ch. 199, §§ 1, 2.

§ 69-15-105. County or district to establish program to control or eradicate ticks, flies, and other external parasites.

(1) The boards of supervisors in the various counties are hereby authorized and empowered, in their discretion, to put into effect the provisions of this section by order of said respective boards spread upon the minutes of such board when petitioned by a majority of livestock owners in any county or affected district.

(2) The board of supervisors of any county, when petitioned, electing to come under the provisions of this section shall be authorized to appropriate money from the general fund or fix the levy annually of an ad valorem tax, not to exceed two (2) mills, upon the assessed valuation of all real and personal property within the area petitioned for and/or fix a fee not to exceed Twenty-five Cents (25¢) per head on livestock annually, based on cost estimates for a program of controlling or eradicating ticks, flies, and other nuisance insects by dipping livestock or by other appropriate methods.

(3) The board of supervisors of any county, upon designating an area where the program shall be operated, shall request the technical assistance of the Board of Animal Health. The Board of Animal Health shall cooperate in general planning, technical supervision, furnish specifications for vats, and other equipment, select approved chemical agents and test same for effectiveness.

(4) The board of supervisors of any county is authorized to construct dipping vats in suitable locations, purchase other equipment and supplies, and employ such personnel as necessary, including inspectors who shall be enforcement officers for the county board of supervisors.

It shall be the duty of each livestock owner within the area of program operations to cooperate with the board of supervisors and its representatives and comply with the provisions of this section.

(5) The board of supervisors of any county shall have the authority to require all owners when necessary to assemble all their livestock at a designated time and place and have same dipped or treated according to prescribed methods.

Owners who refuse or fail to comply after having been duly notified to have livestock assembled and dipped or treated as prescribed shall be in violation of the provisions of this section and shall be subject to the provisions of Sections 69-15-53 through 69-15-69.

(6) The purpose of this section is to supplement and be in addition to Section 69-15-307, Mississippi Code of 1972, and related statutes. Nothing in this section to the contrary shall replace or minimize existing statute concerning existing laws for the eradication of the cattle fever tick (Margaropus annulatus).

HISTORY: Codes, 1942, § 4861.3; Laws, 1956, ch. 139, §§ 1-7; Laws, 1989, ch. 449, § 11, eff from and after passage (approved March 24, 1989).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

CJS.
3B C.J.S., Animals §§ 135 et seq.

§ 69-15-107. Brucellosis eradication.

(1) In addition to other authority vested in the Board of Animal Health, it shall have the following powers and duties:

(a) To quarantine all herds of cattle where reactors are disclosed or found by private tests, auction barn sale tests, market cattle testing of slaughter cattle and dairy herds that are suspicious to the brucellosis ring test (milk).

(b) Owners of herds so quarantined in counties carrying out brucellosis eradication programs either in cooperation with the board of supervisors or Animal Health Division, Agricultural Research Services, USDA, shall have a maximum of sixty (60) days from date of quarantine issuance in which to have the quarantined portion of their herd officially tested for brucellosis. The herd owner shall be responsible for making herd test arrangements, using at his option either the federal veterinarian assigned to his area or any private practitioner licensed to test cattle in the herd owner's county under the area plan. It shall be the herd owner's responsibility to assemble, confine, and hold the quarantined cattle at a time and place agreed upon by himself and his selected veterinarian for the purpose of identifying and testing those animals required to be tested under the uniform methods and rules for establishing and maintaining modified certified brucellosis areas adopted by the United States Livestock Sanitary Association and approved by the Animal Health Division, Agricultural Research Services, USDA. These uniform methods and rules shall be followed explicitly in carrying out all official area brucellosis testing work, and owners of quarantined herds shall be responsible for retesting of quarantined portions of their herds within time limits prescribed by these rules. Within these time limits, quarantined herd owners shall enjoy the same options for veterinarian selection and time and test location as outlined above for the original test.

(c) Owners of quarantined herds who fail to take action in having their herd officially tested for brucellosis within sixty (60) days of quarantine issuance shall upon notice from the State Veterinarian assemble or have assembled these quarantined cattle at a place and time designated in order that the brucellosis test may be applied. Assistance shall be given by such owners in confining these cattle in order that the test may be administered properly, and the same cattle shall be returned for checking, tagging and branding of reactors at a time and place designated by the inspector or veterinarian in charge. It shall be the duty of the sheriff in any county in which the work of brucellosis testing is in progress to render to agents of the Board of Animal Health every assistance in enforcing the laws and regulations of said board. If the sheriff of any county shall neglect, fail or refuse to render this assistance when so required, he shall be guilty of a misdemeanor and be punishable as in other cases of malfeasance or misfeasance.

(d) All cattle which have reacted to the brucellosis test shall be tagged and branded and removed from the herd of cattle and shall be permitted to market for slaughter within a period of fifteen (15) days after the date of tagging and branding. When funds are available from the state or federal government, indemnities will be paid to the owner of reactors when properly appraised and disposed of.

(e) As stated in paragraph (b), current uniform methods and rules for establishing and maintaining modified certified brucellosis areas adopted by the United States Livestock Sanitary Association and approved by the Animal Health Division, Agricultural Research Services, USDA, shall be followed.

(2) Any person, firm or corporation failing to comply with any of the provisions of this section or interfering with any duly appointed officer of the Board of Animal Health in the discharge of his duty, or for having discharged his duties, shall be deemed in violation of the provisions of this section and shall be subject to the provisions of Sections 69-15-53 through 69-15-69.

HISTORY: Codes, 1942, § 4837.5; Laws, 1966, ch. 231, §§ 1, 2; Laws, 1989, ch. 449, § 12, eff from and after passage (approved March 24, 1989).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 21 et seq. (destruction of diseased animals).

CJS.

3B C.J.S., Animals §§ 135 et seq.

§ 69-15-109. Emergency control of foot and mouth disease and other infectious diseases of animals and poultry.

(1) The Governor of the State of Mississippi, when advised by the Board of Animal Health that an emergency exists due to the presence of foot and mouth disease, rinderpest, contagious pleuropneumonia, or other contagious or infectious diseases of animals, or European fowl pest and similar diseases among poultry, in this state, or chronic wasting disease in any cervids, is hereby authorized to declare a state of emergency and to order all animals or poultry quarantined or slaughtered that may be affected with, or possible carriers of such diseases.

(2) The Governor is hereby authorized and empowered to cooperate with any department of the federal government engaged in the combating and

control of any such disease mentioned in subsection (1) and to this end the Governor is authorized and empowered to do any and all things in cooperation with the federal government necessary to the control and extermination of any such diseases mentioned in subsection (1) among animals or poultry that may be affected therewith.

(3) For the purposes of this section, the Governor shall have full and complete police power, and shall exercise same anywhere in the State of Mississippi, and if an emergency should exist to such an extent that such becomes necessary the Governor may employ such personnel to enforce such police powers and quarantine that may be necessary to control and prevent the spreading of any such diseases mentioned in subsection (1) among animals or poultry in this state. Such personnel when appointed by the Governor shall work under the direction of the Mississippi Board of Animal Health, or its representative, and shall be paid such compensation as the Governor may determine out of any money made available for the enforcement of this section.

(4) When any animals or poultry or materials are ordered to be destroyed, under the provisions of this section, the owner of same shall be paid for each such animal or poultry or materials destroyed an amount not exceeding the amount authorized to be paid by the federal government in matching funds expended for the destruction of each such animal or poultry or materials infected with any such diseases mentioned in subsection (1).

(5) In the event of the happening of an outbreak of any such diseases mentioned in subsection (1) in Mississippi, the Governor is hereby authorized to borrow not to exceed Two Hundred Thousand Dollars ($200,000.00) to carry out the terms and provisions of this section.

HISTORY: Codes, 1942, § 4847.5; Laws, 1948, ch. 196, §§ 1-5; Laws, 1954, ch. 149, §§ 1-5 [¶¶ 1-5]; Laws, 2003, ch. 516, § 4, eff from and after passage (approved Apr. 19, 2003).

RESEARCH REFERENCES

Am. Jur.

1 Am. Jur. Pl & Pr Forms (Rev), Abatement, Survival, and Revival, Form 21.1 (Order stay of destruction of animals).

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 21 et seq. (destruction of diseased animals).

37 Am. Jur. Proof of Facts 2d 711, Justifiable Destruction of Animal.

CJS.

3B C.J.S., Animals §§ 135 et seq.

§ 69-15-111. Livestock; how brought into state.

It shall be unlawful for any person or persons, firm or corporation to drive, convey, transport or allow to drift from any state or territory, into this state any livestock except under the supervision and in accordance with the rules and regulations of the Board of Animal Health. Steers may be moved into the state for feeding and grazing purposes under special permit issued by the State Veterinarian.

Livestock shipped, trailed, driven or otherwise transported into this state from other states or territories shall be subject to examinations and tests approved by the Board of Animal Health for the purpose of determining if such animals are free of infectious abortion or bangs disease. Should such animals react to the tests, they shall immediately upon notice to the owner from the board or one (1) of the board's inspectors or veterinarians be returned to the state from which they came, or slaughtered under the supervision and direction of the board. The Board of Animal Health is authorized and empowered to require livestock owners or persons having livestock in charge, affected with, or exposed to infectious abortion, upon notice to assemble or have assembled such livestock at a place and time designated by an inspector or veterinarian of the Board of Animal Health or of the United States Bureau of Animal Industry in order that the proper and necessary tests and examinations can be made. All animals which react to the test for infectious abortion or show marked diagnostic symptoms of infectious abortion shall be quarantined, segregated, isolated or otherwise disposed of under the direction of the Board of Animal Health.

Any person, firm or corporation violating any of the provisions of this section or any of the rules and regulations of the Board of Animal Health shall be deemed in violation of the provisions of this section and shall be subject to the provisions of Sections 69-15-53 through 69-15-69.

HISTORY: Codes, 1930, § 5439; 1942, § 4862; Laws, 1930, ch. 91; Laws, 1989, ch. 449, § 13, eff from and after passage (approved March 24, 1989).

Cross References — Payment by county for cattle injured in dipping process, see § 19-5-13.

Common graves for livestock dying as result of epidemic, see § 19-5-15.

Regulation of feeding of swine, see §§ 69-11-1 et seq.

Appraisement and payment for condemned cattle, see § 69-15-211.

Disposal of bodies of animals dead from disease, see § 97-27-3.

Crime of selling diseased animal, see § 97-27-5.

Crime of failing to dispose of or segregate diseased animal, see § 97-27-7.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

CJS.

3B C.J.S., Animals §§ 269 et seq.

§ 69-15-113. Infected livestock; pay for when destroyed.

Owners of livestock infected with any contagious or infectious disease, whose animals are destroyed by authority of the board of animal health shall receive compensation from the state in accordance with the following provisions:

Before authorizing the destruction of such diseased animals, they shall be appraised by a duly commissioned representative of the board of animal health of the State of Mississippi or a cooperating representative of the U. S. Department of Agriculture, Bureau of Animal Industry, duly commissioned by said board of animal health. If the owner shall refuse to accept such appraisal, the animals shall be appraised (under oath) by three competent and disinterested appraisers; one to be selected by the duly commissioned representative of the board of animal health or of the U. S. Department of Agriculture, Bureau of Animal Industry duly commissioned by said board of animal health, one by the owner, and those two to select a third; the appraisal to be based upon the value of the animals at the time the animals are condemned for destruction; and, provided, further, that the state to pay not to exceed one-third of the difference between the appraised value of each animal so destroyed and the value of the salvage thereof, when any portion of said appraised value is paid by the U. S. Department of Agriculture, and not more than two-thirds thereof in the event no portion is paid by said U. S. Department of Agriculture. In no event shall the state be liable on an appraised value exceeding $25.00 per head for grade cattle and $50.00 per head for registered purebred cattle.

Upon receipt of a duly certified copy of the appraisal of the stock condemned to be destroyed, and a certificate from the board of animal health that the condemned stock has been destroyed in accordance with the rules and regulations of said board, a requisition shall be issued, signed by the executive officer and the chairman of the state board of animal health, authorizing the state auditor to issue a warrant for the amount stipulated out of funds in the state treasury especially appropriated for that purpose.

HISTORY: Codes, Hemingway's 1917, § 5501; 1930, § 5416; 1942, § 4839; Laws, 1916, ch. 122; Laws, 1938, ch. 177.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Payment by county for cattle injured in dipping process, see § 19-5-13.

Appraisement and payment for condemned cattle, see § 69-15-211.

JUDICIAL DECISIONS

1. In general.

Appraisement by three competent and disinterested appraisers is condition precedent to Board's requirement of destruction of diseased animals. Mississippi Live Stock Sanitary Board v. Broadus, 181 Miss. 122, 178 So. 787, 1938 Miss. LEXIS 54 (Miss. 1938).

Appraisement is prerequisite to reimbursement of owner, from state funds, for destruction of cattle. Mississippi Live Stock Sanitary Board v. Broadus, 181 Miss. 122, 178 So. 787, 1938 Miss. LEXIS 54 (Miss. 1938).

Purpose of appraisement is disinterested valuation and attempted appraisal by owner and representative of State Livestock Sanitary Board is ineffective. Mississippi Live Stock Sanitary Board v. Broadus, 181 Miss. 122, 178 So. 787, 1938 Miss. LEXIS 54 (Miss. 1938).

Statute does not authorize State Livestock Sanitary Board to order destruction of tubercular cattle without some compensation to owner. Mississippi Live Stock Sanitary Board v. Broadus, 181 Miss. 122, 178 So. 787, 1938 Miss. LEXIS 54 (Miss. 1938).

Court of equity is without power to order slaughter of oxen infected with tuberculosis where statute relating to appraisal was not complied with. Mississippi Live Stock Sanitary Board v. Broadus, 181 Miss. 122, 178 So. 787, 1938 Miss. LEXIS 54 (Miss. 1938).

RESEARCH REFERENCES

ALR.

Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

Am. Jur.

4 Am. Jur. 2d, Animals §§ 103-120.

1 Am. Jur. Pl & Pr Forms (Rev), Abatement, Survival, and Revival, Form 21.1 (Order stay of destruction of animals).

37 Am. Jur. Proof of Facts 2d 711, Justifiable Destruction of Animal.

CJS.

3B C.J.S., Animals §§ 99 et seq.

§ 69-15-115. Penalties.

Any person, firm or corporation violating any of the provisions of Article 5 of this chapter, or any of the rules and regulations of the Board of Animal Health, relative to the control and eradication of tuberculosis, anthrax, hog cholera, Texas and splenic fever and the fever-carrying tick (Margaropus annulatus), cattle brucellosis, anaplasmosis, infectious bovine rhinotracheitis, muscosal disease, cattle viral diarrhea, cattle scabies, sheep scabies, swine erysipelas, swine brucellosis, equine encephalomyelitis, rabies, vesicular diseases, salmonella group, newcastle disease, infectious laryngotracheitis, ornithosis-psittacosis, mycoplasma group, equine infectious anemia and any suspected new and/or foreign diseases of livestock and poultry, and all other diseases of animals in this state, made and promulgated thereunder shall be subject to the provisions of Sections 69-15-53 through 69-15-69.

HISTORY: Codes, Hemingway's 1921 Supp. § 5506f; 1930, § 5424; 1942, § 4847; Laws, 1920, ch. 327; Laws, 1930, ch. 99; Laws, 1962, ch. 166, § 2; Laws, 1981, ch. 316, § 1; Laws, 1989, ch. 449, § 14, eff from and after passage (approved March 24, 1989).

Cross References — Administrative procedures to enforce rules and regulations of Board of Animal Health, see §§ 69-15-51 et seq.

General penalties for violating provisions of this article, see § 69-15-331.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 69-15-117. All equidae located on premises where public participates in equine activities to be accompanied by copy of negative infectious anemia test; regulations; penalties.

(1) All equidae located on any premises within the state where the public participates in equine activities for any purpose, including, but not limited to,

training, breeding, performing or exhibition shall be accompanied by the original copy of a negative current equine infectious anemia (EIA) test. All equidae moving within the state for any reason shall be accompanied by the original copy of a negative current equine infectious anemia (EIA) test. Equidae being sold at a public sale or sold at a private sale shall have a negative current equine infectious anemia (EIA) test.

(2) The Board of Animal Health shall promulgate rules and regulations to enforce this section.

(3) Any person violating this section or the rules and regulations promulgated under this section by the Board of Animal Health is subject to the penalties provided in Section 69-15-65.

HISTORY: Laws, 1995, ch. 509, § 1; Laws, 2001, ch. 573, § 1, eff from and after July 1, 2001.

ARTICLE 5.

CATTLE TUBERCULOSIS.

Sec.

69-15-201. Employment of veterinarians to co-operate in tests.
69-15-203. Veterinarians to be detailed to aid counties.
69-15-205. Elections on tuberculosis control.
69-15-207. Submission of cattle for tuberculin tests.
69-15-209. Condemnation, branding and disposition of cattle reacting to tuberculin tests.
69-15-211. Payment for condemned cattle in counties engaged in tuberculosis eradication under area plan; appraisement.
69-15-213. Payment for condemned cattle in counties not operating on area plan.

§ 69-15-201. Employment of veterinarians to co-operate in tests.

The State Veterinarian, with the approval and consent of the Board of Animal Health is directed to employ one or more qualified veterinarians to be paid from the funds at the disposal of said board, who shall cooperate with the veterinarians of the U.S. Department of Agriculture, Bureau of Animal Industry, in testing cattle for tuberculosis in this state.

HISTORY: Codes, Hemingway's 1921 Supp. § 5506a; 1930, § 5417; 1942, § 4840; Laws, 1920, ch. 327; Laws, 1930, ch. 99; Laws, 1990, ch. 519, § 5, eff from and after passage (approved April 2, 1990).

Cross References — Penalties for violating any provision of this article, see § 69-15-331.

RESEARCH REFERENCES

ALR.

Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

§ 69-15-203. Veterinarians to be detailed to aid counties.

The State Veterinarian is directed to detail a veterinarian to assist such counties as desire to undertake the control and eradication of tuberculosis among cattle and such assistance shall be given to the counties in the order in which request is made and to the extent that the funds of the board will permit.

HISTORY: Codes, Hemingway's 1921 Supp. § 5506b; 1930, § 5418; 1942, § 4841; Laws, 1920, ch. 327; Laws, 1930, ch. 99; Laws, 1990, ch. 519, § 6, eff from and after passage (approved April 2, 1990).

§ 69-15-205. Elections on tuberculosis control.

The board of supervisors of any county in the State of Mississippi may, by order entered on the minutes of said board, express their intention to engage in the eradication of tuberculosis, in livestock under the area plan in co-operation with the board of animal health, and the United States Bureau of Animal Industry. Such order so entered upon the minutes of said board shall be published for thirty days in a newspaper published in said county and having a general circulation therein, and at the expiration of said thirty days if twenty per cent or more of the qualified electors of said county shall not file with said board a petition protesting against said order, the board shall enter an order upon their minutes to so engage in said eradication provided for in the previous order; but should twenty per cent or more of the qualified electors of said county file with said board a petition protesting against said order, then the board of supervisors shall call an election, after having given the notice required by law, and if a majority of the qualified electors of said county voting at said election in favor of engaging in such eradication, then the board shall enter upon its minutes an order to that effect; should a majority of the qualified electors of said county voting fail to vote in favor of engaging in such eradication, then said board shall enter an order upon its minutes refusing to engage in such eradication.

HISTORY: Codes, Hemingway's 1921 Supp. § 5506c; 1930, § 5419; 1942, § 4842; Laws, 1920, ch. 327; Laws, 1930, ch. 99.

RESEARCH REFERENCES

CJS.

3B C.J.S., Animals §§ 127 et seq.

§ 69-15-207. Submission of cattle for tuberculin tests.

In counties doing tuberculosis eradication work under the provisions of this article, owners of cattle are required to submit all their cattle to be tuberculin tested at such time and place as designated by the board of animal health, and provide such help as may be needed by the inspector doing the work.

HISTORY: Codes, 1930, § 5423; 1942, § 4846; Laws, 1930, ch. 99.

RESEARCH REFERENCES

CJS.
3B C.J.S., Animals §§ 127 et seq.

§ 69-15-209. Condemnation, branding and disposition of cattle reacting to tuberculin tests.

Cattle which react to the tuberculin test or show marked diagnostic symptoms of tuberculosis shall be condemned and branded with the letter "T" on the left jaw, and be disposed of as directed by the board of animal health.

HISTORY: Codes, Hemingway's 1921 Supp. § 5506e; 1930, § 5422; 1942, § 4845; Laws, 1920, ch. 327; Laws, 1930, ch. 99.

RESEARCH REFERENCES

Am. Jur.
1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 21 et seq. (destruction of diseased animals).

CJS.
3B C.J.S., Animals §§ 127 et seq.

§ 69-15-211. Payment for condemned cattle in counties engaged in tuberculosis eradication under area plan; appraisement.

The county boards of supervisors of counties engaged in eradicating tuberculosis in livestock under the area plan in co-operation with the board of animal health and the United States Bureau of Animal Industry may pay out of the general funds of the county money for necessary expenditure including the employment of accredited or approved veterinarians and for the payment of indemnity to cattle owners who have animals slaughtered because of having reacted to a tuberculin test authorized by the board and the United States Bureau of Animal Industry. Provided that said animals so classed are appraised and slaughtered as provided in the rules and regulations of the board of animal health. The indemnity received shall not exceed Fifty Dollars ($50.00) for each grade animal or One Hundred Dollars ($100.00) for each registered animal so condemned.

HISTORY: Codes, Hemingway's 1921 Supp. § 5506d; 1930, § 5420; 1942, § 4843; Laws, 1920, ch. 327; Laws, 1930, ch. 99.

Cross References — Proof of claim and payment, see § 19-13-49.

RESEARCH REFERENCES

ALR.
Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

Am. Jur.
4 Am. Jur. 2d, Animals §§ 103-120.

CJS.
3B C.J.S., Animals §§ 127 et seq.

§ 69-15-213. Payment for condemned cattle in counties not operating on area plan.

The boards of supervisors of the various counties of the State of Mississippi which are not engaged in the eradication of bovine tuberculosis on the area plan, may in their discretion, pay indemnity on cattle which react to a co-operative tuberculin test authorized by the Mississippi Board of Animal Health on the same basis as provided in Section 69-15-211.

HISTORY: Codes, 1930, § 5421; 1942, § 4844; Laws, 1930, ch. 99.

RESEARCH REFERENCES

Am. Jur.
4 Am. Jur. 2d, Animals § 103-120.

CJS.
3B C.J.S., Animals §§ 127 et seq.

ARTICLE 7.

ERADICATION OF CATTLE TICKS AND OTHER ANIMAL PARASITES.

Sec.
69-15-301. Duties of Board of Animal Health; assistant executive officer for tick eradication; inspectors, range riders and other employees.
69-15-303. Repealed.
69-15-305. Appointment, dismissal and compensation of local state inspectors and range riders.
69-15-307. Board of supervisors to assist in eradicating tick fever.
69-15-309. When board of supervisors to act.
69-15-311. Infected cattle to be dipped.
69-15-313. Board of supervisors to provide dipping vats when necessary.
69-15-315. Violation by supervisors.
69-15-317. Cattle and other livestock to be dipped.
69-15-319. Notice to be posted in certain cases.
69-15-321. Procedure when owner fails to dip.
69-15-323. Expenses incurred in enforcement to be lien on animal.
69-15-325. Driving and drifting from quarantined to free county.
69-15-327. Duty of sheriff; penalty for failure to act.
69-15-329. Destruction of vats.

§ 69-15-301. Duties of Board of Animal Health; assistant executive officer for tick eradication; inspectors, range riders and other employees.

(1) The work of tick eradication shall be prosecuted by the Board of

Animal Health under the following provisions: The State Veterinarian, with the approval and consent of the board, shall hire an assistant executive officer for tick eradication who shall receive a salary of not exceeding Four Thousand Dollars ($4,000.00) per annum to be fixed by the board, who shall be duly qualified for the work and of recognized ability and experience in tick eradication and who shall have full authority and jurisdiction, subject to the rules and regulations of the Board of Animal Health in the matter, direction and administration of the work of eradication of the Texas and splenic fever and the fever-carrying tick, in the State of Mississippi, until such time as in the judgment of the board it is necessary for the prosecution to a successful conclusion of the campaign of eradicating said ticks and tick fever.

(2) The assistant executive officer shall have for the purpose of eradication of the Texas and splenic fever or fever-carrying tick, all the powers, authority and jurisdiction now conferred by law upon the Executive Officer of the Board of Animal Health, upon the conditions and limitations set forth in this section.

(3) The assistant executive officer shall employ such inspectors and range riders and other employees as may be deemed necessary by the Board of Animal Health for the successful prosecution of the work of eradication of the Texas and splenic fever and fever-carrying tick, the compensation of such inspectors, range riders, and other employees to be fixed by the board and paid out of any appropriation made to the board for tick eradication.

HISTORY: Codes, Hemingway's 1917, § 5492; 1930, § 5414; 1942, § 4837; Laws, 1908, ch. 106; Laws, 1926, ch. 264; Laws, 1928, ch. 61; Laws, 1962, ch. 166, § 1; Laws, 1990, ch. 519, § 7, eff from and after passage (approved April 2, 1990); Laws, 2018, ch. 395, § 15, eff from and after July 1, 2018.

Cross References — Board of Animal Health, generally, see §§ 69-15-1 et seq.
Penalties for violating any provision of this article, see § 69-15-331.
Regulation of drugs for animals, see §§ 69-17-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Construction and application.

1. Validity.

This statute is constitutional. Moss v. Mississippi Live Stock Sanitary Board, 154 Miss. 765, 122 So. 776, 1929 Miss. LEXIS 176 (Miss. 1929).

Livestock owners violating law requiring dipping of animals to eradicate fever tick were not entitled to protection of equity because of threatened invasion of constitutional right. Moss v. Mississippi Live Stock Sanitary Board, 154 Miss. 765, 122 So. 776, 1929 Miss. LEXIS 176 (Miss. 1929).

Chapter 106 Laws 1908, a former statute, was not invalid as a delegation of legislative functions. Abbott v. State, 106 Miss. 340, 63 So. 667, 1913 Miss. LEXIS 139 (Miss. 1913).

2. Construction and application.

Court of equity lacked power to order slaughter of oxen infected with tuberculosis where statute relating to appraisal was not complied with. Mississippi Live Stock Sanitary Board v. Broadus, 181 Miss. 122, 178 So. 787, 1938 Miss. LEXIS 54 (Miss. 1938).

In prosecution for moving cattle from

Louisiana to Mississippi, evidence that copies of necessary Federal certificates authorizing such movement were customarily mailed to Mississippi Livestock Board, and that secretary thereof had been unable to find copy of any certificate issued to defendant, was insufficient for jury in absence of proof of any law or regulation requiring Federal authorities to file copies of Federal certificates with Mississippi Livestock Board. Calhoun v. State, 172 Miss. 559, 161 So. 297, 1935 Miss. LEXIS 182 (Miss. 1935).

Tick eradication statutes do not authorize entry on owner's premises and seizure of livestock on refusal to dip. Gilbert v. Crosby, 160 Miss. 711, 135 So. 201, 1931 Miss. LEXIS 217 (Miss. 1931).

Writ authorizing seizure of livestock on owner's refusal to dip under tick eradication statutes was void, rendering sheriff liable for civil trespass. Gilbert v. Crosby, 160 Miss. 711, 135 So. 201, 1931 Miss. LEXIS 217 (Miss. 1931).

The state livestock sanitary board could sue only by officers designated by the statute. Mississippi Live Stock Sanitary Bd. v. Williams, 133 Miss. 98, 97 So. 523, 1923 Miss. LEXIS 118 (Miss. 1923), overruled, Pruett v. City of Rosedale, 421 So. 2d 1046, 1982 Miss. LEXIS 2273 (Miss. 1982).

Section 3, ch. 106 Laws 1908, a former statute, did not make it a misdemeanor to refuse to dip cattle infected with tick fever as provided by rules of the live stock board. Abbott v. State, 106 Miss. 340, 63 So. 667, 1913 Miss. LEXIS 139 (Miss. 1913).

RESEARCH REFERENCES

ALR.

Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

CJS.

3B C.J.S., Animals §§ 135 et seq.

§ 69-15-303. Repealed.

Repealed by Laws, 2018, ch. 395, § 14, eff from and after July 1, 2018.

§ 69-15-303. [Codes, Hemingway's 1917, § 5492; 1930, § 5414; 1942, § 4837; Laws, 1908, ch. 106; Laws, 1926, ch. 264; Laws, 1928, ch. 61; Laws, 1962, ch. 166, § 1, eff from and after passage (approved April 30, 1962).]

Editor's Notes — Former § 69-15-303 created an advisory commission to the Board of Animal Health in all matters related to the eradication of the Texas fever and splenic fever and fever-carrying ticks.

§ 69-15-305. Appointment, dismissal and compensation of local state inspectors and range riders.

The State Veterinarian shall appoint the necessary number of local state inspectors and range riders to assist the counties in systematic tick eradication, who shall be commissioned by the Board of Animal Health as livestock inspectors. The salaries of said inspectors and range riders shall be fixed by the Board of Animal Health and shall be sufficient to insure the employment of competent men. If the services of any of said inspectors or range riders is not satisfactory to the State Veterinarian, his services shall be immediately discontinued, and the decision of the State Veterinarian, after confirmation by the board, shall be final without recourse and the commission of said inspector shall be cancelled. The salaries of said inspectors shall be paid from funds at the disposal of the Board of Animal Health, drawn by secretary and approved by chairman.

HISTORY: Codes, 1930, § 5429; 1942, § 4852; Laws, 1926, ch. 265.

§ 69-15-307. Board of supervisors to assist in eradicating tick fever.

The board of supervisors in the various counties of the state are authorized and empowered to appropriate money out of the general fund of the county to be used for the purpose of co-operating with the Mississippi Board of Animal Health and the United States Department of Agriculture, Bureau of Animal Industry, in eradicating tick fever, cattle tick, lice, and other animal parasites, and any other contagious and infectious diseases of livestock or the causes of such diseases.

HISTORY: Codes, 1930, § 5425; 1942, § 4848; Laws, 1926, ch. 265; Laws, 1944, ch. 194.

RESEARCH REFERENCES

CJS.

3B C.J.S., Animals §§ 135 et seq.

§ 69-15-309. When board of supervisors to act.

If it shall be determined by the State Veterinarian, or his authorized agent, that any county or counties shall be partially or completely infested with the cattle tick (Margaropus annulatus), the board of supervisors of said counties which are partially or completely infested with the cattle tick (Margaropus annulatus) shall immediately take up the work of systematic tick eradication as provided in this article.

HISTORY: Codes, 1930, § 5427; 1942, § 4850; Laws, 1926, ch. 265.

RESEARCH REFERENCES

ALR.

Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

§ 69-15-311. Infected cattle to be dipped.

Systematic dipping of all cattle, horses, jacks, jennets and mules infested with or exposed to the cattle tick (Margaropus annulatus), shall be taken up as soon as practical in all counties or portions of counties that shall at any time be found partially or completely infested with the cattle tick (Margaropus annulatus) under the direction of the State Veterinarian, acting under the authority as herein provided, and as provided by the rules and regulations of the board of animal health. However, this section shall not hinder or handicap the operation of stock law.

HISTORY: Codes, 1930, § 5426; 1942, § 4849; Laws, 1926, ch. 265.

Cross References — Tick reinfestation in counties not under statewide stock law, see § 69-13-13.

Dipping of uninfected cattle, see § 69-15-317.

JUDICIAL DECISIONS

1. In general.

Owner of livestock which was unlawfully seized and sold under tick eradication statutes was entitled to recover market value. Gilbert v. Crosby, 160 Miss. 711, 135 So. 201, 1931 Miss. LEXIS 217 (Miss. 1931).

RESEARCH REFERENCES

ALR.

Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

CJS.

3B C.J.S., Animals §§ 127 et seq.

§ 69-15-313. Board of supervisors to provide dipping vats when necessary.

The boards of supervisors, after being notified by the State Veterinarian that the cattle tick (Margaropus annulatus) is known to exist in their respective counties, shall provide such number of dipping vats as may be fixed by the State Veterinarian or his authorized representative, and provide the proper chemicals and other materials necessary to be used in the work of systematic tick eradication in such counties, and said work of systematic tick eradication shall begin on the date indicated by the State Veterinarian and continue until the cattle tick (Margaropus annulatus) is completely eradicated, and notice in writing of same is given by the State Veterinarian.

HISTORY: Codes, 1930, § 5428; 1942, § 4851; Laws, 1926, ch. 265.

RESEARCH REFERENCES

CJS.

3B C.J.S., Animals §§ 127 et seq.

§ 69-15-315. Violation by supervisors.

If the board of supervisors shall fail, refuse or neglect to comply with the provisions of this article, the state veterinarian or an authorized agent of the State Veterinarian, shall apply to any court of competent jurisdiction for a writ of mandamus or shall institute such other proceedings as may be necessary and proper to compel such county boards of supervisors to comply with the provisions of this article applying to them.

HISTORY: Codes, 1930, § 5430; 1942, § 4853; Laws, 1926, ch. 265.

Cross References — Remedy of mandamus, generally, see §§ 11-41-1 et seq.

RESEARCH REFERENCES

Am. Jur.
1 Am. Jur. Pl & Pr Forms (Rev), Abatement, Survival, and Revival, Form 21.1 (Order stay of destruction of animals).

17 Am. Jur. Pl & Pr Forms (Rev), Mandamus, Form 205.1 (Alternative writ of mandamus – To prevent destruction of animals).

§ 69-15-317. Cattle and other livestock to be dipped.

Any person, or persons, firms or corporations, owning or having in charge any cattle, horses, jacks, jennets or mules in any county where tick eradication shall be taken up, or is in progress under existing laws, shall, on notification by any livestock inspector to do so, have such cattle, horses, jacks, jennets or mules dipped regularly every 14 days in a vat properly charged with arsenical solution, as recommended by the United States Bureau of Animal Industry under the supervision of said inspector, at such time and places and in such manner as may be designated by the livestock inspector. All animals dipped shall be marked for identification. The dipping period shall be continued as long as may be required by the rules and regulations of the State Board of Animal Health, which shall be sufficient in number and length of time to completely destroy and eradicate all cattle ticks (margaropus annulatus) in such county or counties.

HISTORY: Codes, 1930, § 5431; 1942, § 4854; Laws, 1926, ch. 265.

Cross References — Dipping of cattle infected with ticks, see § 69-15-311.

JUDICIAL DECISIONS

1. In general.

Officers and agents of Livestock Sanitary Board are not authorized to seize stock for dipping under tick eradication statute without proper writ. Cook v. Waldrop, 160 Miss. 862, 133 So. 894, 1931 Miss. LEXIS 175 (Miss. 1931).

Owner's failure to protest against invasion of premises to seize livestock for dipping does not constitute consent to invasion. Cook v. Waldrop, 160 Miss. 862, 133 So. 894, 1931 Miss. LEXIS 175 (Miss. 1931).

In replevin action to recover possession of livestock, testimony showing sheriff acted in accordance with statute on plaintiff's refusal to dip stock was admissible on question of punitive damages. Cook v. Waldrop, 160 Miss. 862, 133 So. 894, 1931 Miss. LEXIS 175 (Miss. 1931).

Where parties concerned with taking and detention of livestock for dipping acted in good faith in accordance with apparent rights under tick eradication statute, owner in replevin action could not recover punitive damages. Cook v. Waldrop, 160 Miss. 862, 133 So. 894, 1931 Miss. LEXIS 175 (Miss. 1931).

Under § 2 Ch. 221 Laws 1918, a former statute, a person impounding cattle infested with fever tick may cause tick eradication authorities to take charge of them as running at large although such cattle are in his pasture. Cooper v. Martin, 141 Miss. 756, 105 So. 740, 1925 Miss. LEXIS 191 (Miss. 1925).

Under § 1 Ch. 167 Laws 1916, a former statute, authorizing the appointment of persons to assist the county superintendent of tick eradication and their discharge by the board of supervisors, the latter cannot be compelled to discharge such persons by a writ of mandamus since the board has authority to exercise its discretion. State ex rel. Potter v. Board of Sup'rs, 133 Miss. 562, 98 So. 101, 1923 Miss. LEXIS 172 (Miss. 1923).

Under Ch. 221 Laws 1918, a former statute, undipped stock infested with ticks could not be seized on the public road in possession of the owner without a writ of seizure. Byrd v. Welch, 128 Miss. 839, 91 So. 568, 1922 Miss. LEXIS 173 (Miss. 1922).

Courts do not take judicial notice of rules and regulations of the live stock sanitary board, but they must be proven as municipal ordinances are required to be. Covington County v. Pickering, 123 Miss. 20, 85 So. 114, 1920 Miss. LEXIS 3 (Miss. 1920).

Chapter 221 Laws 1918, is supplementary to Ch. 167 Laws 1916 and does not repeal it. McMillan v. Live Stock Sanitary Board, 119 Miss. 500, 81 So. 169, 1919 Miss. LEXIS 27 (Miss. 1919), limited, Mississippi Live Stock Sanitary Bd. v. Williams, 133 Miss. 98, 97 So. 523, 1923 Miss. LEXIS 118 (Miss. 1923).

RESEARCH REFERENCES

ALR.

Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

CJS.

3B C.J.S., Animals §§ 127 et seq.

§ 69-15-319. Notice to be posted in certain cases.

Quarantines and dipping notices for cattle, horses, jacks, jennets and mules, the owner or owners of which cannot be found, shall be served by posting copy of such notice in not less than three public places within the county in community where stock were found, one of which shall be placed at the county court house. Such posting shall be due and legal notice.

HISTORY: Codes, 1930, § 5432; 1942, § 4855; Laws, 1926, ch. 265.

§ 69-15-321. Procedure when owner fails to dip.

Cattle, horses, jacks, jennets or mules infested with or exposed to the cattle tick (margaropus annulatus), in any county known to be partly or wholly infested with such tick, the owner or owners of which, after five days written notice from a livestock inspector, or such animals as are provided for under Section 69-15-319, shall fail or refuse to dip such animals at a time and place designated in such notice and regularly every 14 days thereafter until released, in a vat properly charged with arsenical solution, under the supervision of a livestock inspector, said cattle, horses, jacks, jennets or mules shall be dipped, quarantined and placed in the custody of the sheriff, by the livestock inspector. Suitably fenced areas for holding such cattle while in the custody of the sheriff shall be provided by the board of supervisors.

HISTORY: Codes, 1930, § 5433; 1942, § 4856; Laws, 1926, ch. 265.

JUDICIAL DECISIONS

1. In general.

Officers and agents of Livestock Sanitary Board are not authorized to seize stock for dipping under tick eradication statute without proper writ. Ainsworth v. Smith, 157 Miss. 202, 127 So. 771, 1930 Miss. LEXIS 277 (Miss. 1930); Cook v. Waldrop, 160 Miss. 862, 133 So. 894, 1931 Miss. LEXIS 175 (Miss. 1931).

Where parties concerned with taking and detention of livestock for dipping acted in good faith in accordance with apparent rights under tick eradication statute, owner in replevin action could not recover punitive damages. Cook v. Waldrop, 160 Miss. 862, 133 So. 894, 1931 Miss. LEXIS 175 (Miss. 1931).

In replevin action to recover possession of livestock, testimony showing sheriff acted in accordance with statute on plaintiff's refusal to dip stock was admissible on question of punitive damages. Cook v. Waldrop, 160 Miss. 862, 133 So. 894, 1931 Miss. LEXIS 175 (Miss. 1931).

Owner's failure to protest against invasion of premises to seize livestock for dipping does not constitute consent to invasion. Cook v. Waldrop, 160 Miss. 862, 133 So. 894, 1931 Miss. LEXIS 175 (Miss. 1931).

Dipping vat inspectors going on premises and taking mules in supposed performance of duties were not guilty of criminal trespass. Bacot v. State, 158 Miss. 258, 130 So. 282, 1930 Miss. LEXIS 41 (Miss. 1930).

RESEARCH REFERENCES

ALR.

Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

§ 69-15-323. Expenses incurred in enforcement to be lien on animal.

Any expense incurred in the enforcement of Section 69-15-321 or for feed, care and handling of such animals while undergoing the process of tick eradication, and any expense incurred in handling, dipping, confining, feeding or pasturing of any animals while in the custody of the sheriff shall constitute a lien upon such animal or animals to be paid by the owner or owners of the animals before the same are released by the sheriff. Should the owner or owners of cattle, horses, jacks, jennets and mules which have been placed in the custody of the sheriff as herein provided, fail or refuse to pay said expenses after five days' notice, they shall be sold by the sheriff of the county after ten days advertising, either by notice at courthouse door and two other public places in the neighborhood of the place at which the animal was taken up, or in the newspaper published in the county having general circulation therein. The said advertisement shall state therein the time and place of sale, which place shall be where the animal is confined. The sale shall be at public auction and to the highest bidder, for cash. Out of the proceeds of the sale, the sheriff shall pay the cost of publishing the notices, costs of dipping, feeding and caring for the animals and the costs of sale which shall include $2.00 in the case of each sale, to said sheriff. The surplus, if any, shall be paid to the owner of the animal or animals, if he can be ascertained. If he cannot be ascertained within thirty days after such sale, then the sheriff shall pay such surplus to the county treasurer for benefit of the general fund of the county; provided, however, that if the owner of the animal or animals shall within three years after the fund is turned over to the county treasurer, as aforesaid, prove to the satisfaction of the board of supervisors of the county that he was the owner of such animals, upon the order of said board such surplus shall be refunded to the owner.

HISTORY: Codes, 1930, § 5434; 1942, § 4857; Laws, 1926, ch. 265.

§ 69-15-325. Driving and drifting from quarantined to free county.

Any person or persons, firm or corporation, driving, conveying, transporting or allowing to drift from any state or territory, into or through this state, or within this state from a quarantined county or area into a free county or area or into a county or area in which systematic tick eradication is in progress, animals infested with or exposed to the cattle fever tick (Margaropus annulatus) shall be deemed to be in violation of the animal health laws of this state and shall be subject to the provisions of Sections 69-15-53 through 69-15-69. Nothing herein shall apply to livestock shipped through a recognized disinfecting station and accompanied by a regulation permit covering the movement therefrom.

HISTORY: Codes, 1930, § 5436; 1942, § 4859; Laws, 1926, ch. 265; Laws, 1989, ch. 449, § 15, eff from and after passage (approved March 24, 1989).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

In prosecution for moving cattle from Louisiana to Mississippi, evidence that copies of necessary Federal certificates authorizing such movement were customarily mailed to Mississippi Livestock Board, and that secretary thereof had been unable to find copy of any certificate issued to defendant, was insufficient for jury in absence of proof of any law or regulation requiring Federal authorities to file copies of Federal certificates with Mississippi Livestock Board. Calhoun v. State, 172 Miss. 559, 161 So. 297, 1935 Miss. LEXIS 182 (Miss. 1935).

RESEARCH REFERENCES

CJS.

3B C.J.S., Animals §§ 134-137.

§ 69-15-327. Duty of sheriff; penalty for failure to act.

It shall be the duty of the sheriff in any county in which the work of tick eradication is in progress, to render all livestock inspectors any assistance in the enforcement of this article and the regulations of the board of animal health. If the sheriff of any county shall neglect, fail or refuse to render this assistance when so required, he shall be guilty of a misdemeanor, and be punishable as in other cases of malfeasance or misfeasance in office.

HISTORY: Codes, 1930, § 5437; 1942, § 4860; Laws, 1926, ch. 265.

Cross References — Duty of sheriff, generally, see § 19-25-67.

§ 69-15-329. Destruction of vats.

Any person or persons who shall wilfully damage or destroy by any means, any vat erected, or in the process of being erected, as herein provided for tick eradication purposes, shall be guilty of a felony, and upon conviction shall be imprisoned not less than six months, or more than five years in the state prison.

HISTORY: Codes, 1930, § 5438; 1942, § 4861; Laws, 1926, ch. 265.

ARTICLE 9.

PENALTIES.

Sec.
69-15-331. General penalty; injunction.

§ 69-15-331. General penalty; injunction.

(1) Except as otherwise provided in the particular sections of this chapter, any person, firm or corporation violating any of the provisions of Articles 1, 3, 5 and 7 of this chapter, or any of the rules and regulations of the Board of Animal Health or interfering with any duly appointed officer of said board in the discharge of his duty, or for having discharged his duties, shall be subject to the provisions of Sections 69-15-53 through 69-15-69.

(2) When necessary to effect the purposes of this chapter, in addition to all other remedies in law or equity, the Commissioner of Agriculture and Commerce may and is hereby authorized to petition the chancery court for an injunction to prevent any violation of the provisions of this chapter, or the continuance of any such violation or to enforce compliance herewith. The chancery court is hereby vested with authority to entertain jurisdiction on any such petition to determine the cause and to issue such process as may be necessary to accomplish the purposes of this chapter.

HISTORY: Codes, 1930, § 5435; 1942, § 4858; Laws, 1926, ch. 265; Laws, 1962, ch. 166, § 3; Laws, 1981, ch. 418, § 1; Laws, 1989, ch. 449, § 16, eff from and after passage (approved March 24, 1989).

Cross References — Administrative procedures to enforce rules and regulations of Board of Animal Health, see §§ 69-15-51 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 17.

LIVESTOCK BIOLOGICS, DRUGS AND VACCINES

Article 1. Livestock Biologics and Drug Law. 69-17-1
Article 3. Tranquilizers or Drugs for Livestock. 69-17-101
Article 5. Hog Cholera Virus. 69-17-201

ARTICLE 1.

LIVESTOCK BIOLOGICS AND DRUG LAW.

Sec.
69-17-1. Citation of article.
69-17-3. Sale of biologics, drugs, etc., prohibited until approved by Board of Animal Health.
69-17-5. Article not applicable where preparations are dispensed by a licensed veterinarian.
69-17-7. Other exemptions.
69-17-9. Application for registration.
69-17-11. Rules and regulations.
69-17-13. Investigation and seizure of products.
69-17-15. Penalties.

§ 69-17-1. Citation of article.

This article shall be known and may be cited and referred to as the "Livestock Biologics and Drug Law of 1958."

HISTORY: Codes, 1942, § 4862-01; Laws, 1958, ch. 152, § 1, eff from and after passage (approved May 2, 1958).

§ 69-17-3. Sale of biologics, drugs, etc., prohibited until approved by Board of Animal Health.

No person, firm or corporation shall sell or offer for sale any biologics, drugs, remedies, tonics, medicine or other health preparation in the State of Mississippi designed for or to be administered to any livestock, poultry or any other animals until same has been registered with and approved for distribution by the board of animal health as herein provided for. Nothing in this article shall be construed to prevent the sale of any antibiotics by any concern to farmers or livestock owners.

HISTORY: Codes, 1942, § 4862-02; Laws, 1958, ch. 152, § 2, eff from and after passage (approved May 2, 1958).

§ 69-17-5. Article not applicable where preparations are dispensed by a licensed veterinarian.

Nothing in this article shall apply to the dispensing of biologics, drugs, remedies, tonics, medicines or preparations hereinabove referred to by a licensed veterinarian if same is delivered by the licensed practitioner in the course of his professional practice or upon his prescription.

HISTORY: Codes, 1942, § 4862-06; Laws, 1958, ch. 152, § 6, eff from and after passage (approved May 2, 1958).

§ 69-17-7. Other exemptions.

Any biologics, drugs, remedies, tonics, medicine or other preparation hereinabove referred to which are licensed or which are authorized to be sold under and in accordance with the Public Health Service Act of July 1, 1944 (58 Stat. 682; 42 U.S.C. Supp. V. 201 et seq.) or under the animal virus-serum-toxin law of March 4, 1913 (37 Stat. 832; 21 U.S.C. 151 et seq.) shall be exempt from the provisions of this article.

HISTORY: Codes, 1942, § 4862-07; Laws, 1958, ch. 152, § 7, eff from and after passage (approved May 2, 1958).

§ 69-17-9. Application for registration.

The application for registration shall be made in such form and contain such information as may be prescribed by the Board of Animal Health of the State of Mississippi and shall give in detail the composition of the preparation, the safety of its use, recommendations and directions for use, claims of effectiveness and proof of all claims, and shall include an official product label and any other evidence which the said board considers necessary in determining eligibility of registration in compliance with this article.

HISTORY: Codes, 1942, § 4862-03; Laws, 1958, ch. 152, § 3, eff from and after passage (approved May 2, 1958).

§ 69-17-11. Rules and regulations.

The said Board of Animal Health is hereby authorized and directed to promulgate rules and regulations not inconsistent with this article, which may be necessary to its effective administration.

HISTORY: Codes, 1942, § 4862-04; Laws, 1958, ch. 152, § 4, eff from and after passage (approved May 2, 1958).

§ 69-17-13. Investigation and seizure of products.

The said Board of Animal Health and its authorized representatives shall have the right to inspect, investigate, sample and seize in accordance with lawful procedure any product covered by this article.

HISTORY: Codes, 1942, § 4862-05; Laws, 1958, ch. 152, § 5, eff from and after passage (approved May 2, 1958).

§ 69-17-15. Penalties.

Any person, firm or corporation violating any provision, or provisions, of this article shall have his registration rejected or revoked, and shall be guilty of a misdemeanor and upon conviction thereof, in addition to the foregoing, may be fined not to exceed One Hundred Dollars ($100.00) or imprisoned in jail not exceeding thirty days, either or both.

HISTORY: Codes, 1942, § 4862-08; Laws, 1958, ch. 152, § 8, eff from and after passage (approved May 2, 1958).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ARTICLE 3.

TRANQUILIZERS OR DRUGS FOR LIVESTOCK.

Sec.
69-17-101. Registration of certain instruments.
69-17-103. Register of drugs dispensed.
69-17-105. Inspection of drugs dispensed register.
69-17-107. Penalties.

§ 69-17-101. Registration of certain instruments.

Every person, except a bona fide merchant, who owns or possesses an instrument designed to project a tranquilizer or drug by means of compressed gas, explosion, or by mechanical means, into livestock for the purpose of rendering the animal docile, by whatever name known, shall register same within thirty days with the commissioner of public safety on forms to be provided by him. Any person hereafter coming into possession of or owning such instrument shall immediately register same with the commissioner of public safety. The commissioner shall make forms available to the general public at all Mississippi Highway Safety Patrol substations.

HISTORY: Codes, 1942, § 4904-01; Laws, 1962, ch. 167, eff from and after passage (approved April 30, 1962).

Cross References — Enforcement of laws concerning theft of cattle, see § 69-29-1.

§ 69-17-103. Register of drugs dispensed.

Any person selling or dispensing tranquilizers or drugs manufactured for injection into livestock by means of an instrument identified in Section 69-17-101 for the purpose of rendering livestock docile, shall maintain a register wherein he shall enter the date such drug is sold or dispensed, the name and address of the purchaser or receiver, and the identity and quantity of said drug.

HISTORY: Codes, 1942, § 4904-01; Laws, 1962, ch. 167, eff from and after passage (approved April 30, 1962).

§ 69-17-105. Inspection of drugs dispensed register.

Any sheriff, constable, police officer, highway patrolman, or special investigator authorized under the provisions of Section 69-29-1, Mississippi Code of 1972, shall have the power to inspect the register of drugs dispensed required to be maintained by this article at a reasonable time during normal business hours of the dispenser or vendor thereof.

HISTORY: Codes, 1942, § 4904-01; Laws, 1962, ch. 167, eff from and after passage (approved April 30, 1962).

§ 69-17-107. Penalties.

Any person who shall violate any provision of this article shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail not less than thirty days nor more than six months, or by both such fine and imprisonment.

HISTORY: Codes, 1942, § 4904-01; Laws, 1962, ch. 167, eff from and after passage (approved April 30, 1962).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ARTICLE 5.

HOG CHOLERA VIRUS.

Sec.
69-17-201. Restriction on possession, sale or other disposition of virus; penalty.

§ 69-17-201. Restriction on possession, sale or other disposition of virus; penalty.

(1) It shall be unlawful for any person, firm, corporation or association to have in possession or keep, sell or offer for sale, barter, exchange, give away or otherwise dispose of hog cholera virus, except at Mississippi State University of Agriculture and Applied Science and under the supervision of a licensed veterinarian and with a special written permit issued by the board of animal health. "Hog cholera virus" means an unattenuated virus administered to swine for the purpose of immunizing such swine from the disease known as hog cholera.

(2) Any person, firm, corporation or association violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than Twenty-five Dollars ($25.00) nor more than Five Hundred Dollars ($500.00).

HISTORY: Codes, 1930, § 5440; 1942, § 4863; Laws, 1928, ch. 50; Laws, 1932, ch. 264; Laws, 1954, ch. 150, §§ 1, 2, eff July 1, 1954.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 19.

REGULATION OF PROFESSIONAL SERVICES

Sec.

69-19-1.	Commissioner of Agriculture and Commerce to regulate.
69-19-3.	Persons subject; exceptions.
69-19-5.	Definitions.
69-19-7.	Person defined.
69-19-9.	License; bond; proof of insurance.
69-19-11.	Repealed.
69-19-13.	Waiver of provisions of chapter in cases of natural disaster.
69-19-15.	Penalties.

§ 69-19-1. Commissioner of Agriculture and Commerce to regulate.

The Commissioner of Agriculture and Commerce shall have the power to make rules and regulations to govern the qualifications and the practicing of persons engaged in the professional services herein defined and to prevent fraudulent practices in the said professional services. No such rule or regulation shall be effective unless and until the same shall have been approved by the advisory board created under the provisions of Section 69-25-3, Mississippi Code of 1972.

HISTORY: Codes, 1942, § 5006; Laws, 1938, ch. 171; Laws, 1971, ch. 476, § 1, eff from and after July 1, 1971.

Cross References — Pesticide application law, see §§ 69-23-101 et seq.

State Entomologist, or designee, as reviewing officer with respect to alleged violation of provisions of this chapter, see § 69-25-51.

JUDICIAL DECISIONS

1. In general.

Rule of plant board requiring that contracts between persons licensed to engage in the profession of eliminating termites from wooden buildings to provide for absolute eradication is unreasonable, where the proof is overwhelming that it is a practical impossibility in all cases to eradicate termites on the first treatment, and that it sometimes requires repeated treatments to do so. State ex rel. Corley v. Hines, 203 Miss. 60, 33 So. 2d 317, 1948 Miss. LEXIS 232 (Miss. 1948).

OPINIONS OF THE ATTORNEY GENERAL

The Department of Agriculture does not have the authority to create a new license category without legislative approval. While Section 69-19-5(d) and Section 69-19-1 et seq. provide for a license for tree surgery work, the statutes do not provide for a license for a tree removal specialist only. McCarty, February 23, 1995, A.G. Op. #95-0108.

Section 69-19-1 et seq. does not require the commissioner to listen to objections of licensed tree surgeons to the licensing of other tree surgeons; however, he may in his administrative discretion listen to those objections presented either orally or in writing. McCarty, February 23, 1995, A.G. Op. #95-0108.

The regulation that contracts between pest control operators and their customers be in writing can be necessarily implied from the authority of the Department of Agriculture and Commerce to prevent fraudulent practices in the pest control profession; however, it cannot be logically implied from the pest control statutes that the department must approve the contracts used by all pest control operators in the state. Spell, November 6, 1998, A.G. Op. #98-0604.

Absent specific statutory authority, there exists no responsibility on the part of a city to enforce any state licensing requirement, including those for landscape contractors. Clark, Mar. 15, 2002, A.G. Op. #02-0104.

§ 69-19-3. Persons subject; exceptions.

This chapter shall apply only to persons soliciting work and engaged in the work defined in this chapter as a profession; but in no event shall it be construed so as to apply to any person employed by the owners or others in possession of property to work under his supervision in grafting, spraying, dusting cotton or any such work.

HISTORY: Codes, 1942, § 5011; Laws, 1938, ch. 171; Laws, 1971, ch. 476, § 6, eff from and after July 1, 1971.

§ 69-19-5. Definitions.

Professional services are defined as follows:

(a) Entomological work. Receiving fees for advice or prescriptions for the control or eradication of any insect pest or rodent. Receiving fees for actual spraying, dusting, fumigating or any other methods used for the control or eradication of any insect pest or rodent. When the majority of the income of an operation, business or individual comes from the actual operation of a farm and the sale of crops therefrom and, as a service to other farmers, these services are performed, such services shall not be included in this definition.

(b) Plant pathological work. Receiving fees for advice or prescriptions for the control or eradication of any plant disease. Receiving fees for actual spraying or any other methods used for the control or eradication of any plant disease. When the majority of the income of an operation, business or individual comes from the actual operation of a farm and the sale of crops therefrom and, as a service to other farmers, these services are performed, such services shall not be included in this definition.

(c) Horticultural and floricultural work. Receiving fees for landscaping and setting of plants or for the sale of any plants for which the seller contracts to render future services.

(d) Tree surgery work. Advertising in a local phone book, newspaper, newsletter, bulletin or other prominently displayed sign as a licensed or bonded tree surgeon and receiving compensation for any work or consultation relative to the care, pruning, cabling, bracing, topping, trimming, fertilizing, cavity work and removal of ornamental trees and shrubs in any manner. Nothing shall prevent any person from performing such services as long as their advertising does not include the description licensed or bonded.

(e) Weed control work. Receiving fees for advice or prescriptions for the control or eradication of any weed. Receiving fees for actual spraying or other methods used for the control or eradication of any plant which grows where not wanted. When the majority of the income of an operation, business or individual comes from the actual operation of a farm and the sale of crops therefrom and, as a service to other farmers, these services are performed, such services shall not be included in this definition.

(f) Soil classifying work. Receiving compensation for plotting the boundaries of soil and describing and evaluating the kinds of soil as to their behavior and response to management under various uses.

HISTORY: Codes, 1942, § 5007; Laws, 1938, ch. 171; Laws, 1971, ch. 476, § 2; Laws, 1972, ch. 378, § 1; Laws, 1979, ch. 338, § 1; Laws, 1993, ch. 414, § 1; Laws, 1995, ch. 591, § 1, eff from and after passage (approved April 7, 1995).

Cross References — Fidelity bond required for horticultural, floricultural, and soil classifying work as defined in this section, see § 69-19-9.

OPINIONS OF THE ATTORNEY GENERAL

Pursuant to Section 69-19-5 a person who is paid for his or her services to remove ornamental trees and shrubs is required to be licensed as a tree surgeon. McCarty, February 23, 1995, A.G. Op. #95-0108.

The Department of Agriculture does not have the authority to create a new license category without legislative approval. While Section 69-19-5(d) and Section 69-19-1 et seq. provide for a license for tree surgery work, the statutes do not provide for a license for a tree removal specialist only. McCarty, February 23, 1995, A.G. Op. #95-0108.

The regulation that contracts between pest control operators and their customers be in writing can be necessarily implied from the authority of the Department of Agriculture and Commerce to prevent fraudulent practices in the pest control profession; however, it cannot be logically implied from the pest control statutes that the department must approve the contracts used by all pest control operators in the state. Spell, November 6, 1998, A.G. Op. #98-0604.

§ 69-19-7. Person defined.

For the purpose of this chapter the word "person" shall be construed to mean an individual, a partnership, or a corporation.

HISTORY: Codes, 1942, § 5008; Laws, 1938, ch. 171; Laws, 1971, ch. 476, § 3, eff from and after July 1, 1971.

§ 69-19-9. License; bond; proof of insurance.

(1) Any person desiring to engage in professional services or work as herein defined shall obtain from the Commissioner of Agriculture and Commerce a license to engage in such professional work, and the application for such license shall be in writing and on such blank forms as may be required.

No fee shall be required for the license. The Commissioner of Agriculture and Commerce shall require applicants to submit statements as to training and experience in professional practice and may further require applicants to pass such tests or examinations as the commissioner may prescribe. The Commissioner of Agriculture and Commerce may require an applicant to furnish a surety bond satisfactory to him and conditioned so that the principal therein named shall conduct honestly such business in accordance with the laws and regulations of this state and shall faithfully perform all his professional service contracts. In no case shall a bond exceeding Ten Thousand Dollars ($10,000.00) be required. A copy of the bond, duly certified by the Commissioner of Agriculture and Commerce or his agent, the State Entomologist, shall be received as evidence in all of the courts of this state without further proof. Any bond issued before July 1, 1971, shall be deemed to be effective until the expiration date stated thereon. Any person having a right of action against such person may bring suit against the principal and sureties of such bond. Should the surety furnished become unsatisfactory, such person shall execute a new bond, and should he fail to do so, it shall be the duty of the Commissioner of Agriculture and Commerce or his agent, the State Entomologist, to cancel his license and give him notice of such fact, and it shall be unlawful thereafter for such person to engage in such business without obtaining a new license.

(2) In addition to the requirements of subsection (1) of this section, the Commissioner of Agriculture and Commerce, with the approval of the Advisory Board to the Bureau of Plant Industry, may require persons providing professional services as defined in this chapter to provide satisfactory proof of insurance for personal injury and property damage incurred as a result of the negligent or careless provision of such services, including coverage for errors and omissions. Such insurance shall be in an amount determined by the advisory board, but shall not exceed Two Hundred Thousand Dollars ($200,000.00). Such insurance shall be in effect before a person may offer such professional services to the general public. Notice of cancellation or failure to renew such insurance shall be provided to the advisory board by the persons offering such professional services. The license to engage in such professional work shall be revoked if proof of insurance is not provided to the advisory board by the licensee within thirty (30) days of the notice of cancellation or failure to renew such insurance.

(3) For horticultural and floricultural work and soil classifying work, as defined in Section 69-19-5, such surety bond which may be required shall be in an amount not to exceed One Thousand Two Hundred Fifty Dollars ($1,250.00) and such insurance which may be required shall be in an amount not to exceed One Hundred Thousand Dollars ($100,000.00).

(4) No such bond and insurance shall be required from any person providing professional services as defined in this chapter if the Commissioner of Insurance certifies that such bond and insurance is not available to such person.

HISTORY: Codes, 1942, § 5009; Laws, 1938, ch. 171; Laws, 1971, ch. 476, § 4; Laws, 1992, ch. 474, § 9; Laws, 2006, ch. 427, § 1, eff from and after July 1, 2006.

Cross References — Exemption of person licensed under this section from licensing provisions of the Pesticide Application Law, see § 69-23-119.

JUDICIAL DECISIONS

1. In general.

One who conducts business of termite eradication and control in this state must first obtain license from state plant board under provisions of this section. Condon v. Snipes, 205 Miss. 306, 38 So. 2d 752, 1949 Miss. LEXIS 433 (Miss. 1949).

OPINIONS OF THE ATTORNEY GENERAL

Pursuant to Section 69-19-9 a person who is paid for his or her services to remove ornamental trees and shrubs is required to be licensed as a tree surgeon. McCarty, February 23, 1995, A.G. Op. #95-0108.

There is no statute which prohibits a person who has practiced tree surgery without a license in the past from now obtaining a license to practice tree surgery. However, under Section 69-19-9 the commissioner may require applicants for a tree surgery license to submit statements as to training and experience. McCarty, February 23, 1995, A.G. Op. #95-0108.

§ 69-19-11. Repealed.

Repealed by Laws of 1997, ch. 449, § 5, eff from and after passage (approved March 25, 1997).

§ 69-19-11. [Codes, 1942, § 5010; Laws, 1938, ch. 171; Laws, 1971, ch. 476, § 5.]

Editor's Notes — Former § 69-19-11 provided for penalties for violations of licensing of professional services. For current provisions affecting penalties for engaging in certain professional services without a license, see § 69-19-15.

§ 69-19-13. Waiver of provisions of chapter in cases of natural disaster.

The Bureau of Plant Industry, Department of Agriculture and Commerce, in cases of natural disaster, may waive any and all provisions of this chapter.

HISTORY: Laws, 1995, ch. 591, § 2, eff from and after passage (approved April 7, 1995).

§ 69-19-15. Penalties.

(1)(a) Any person violating this chapter or the rules and regulations issued under this chapter is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), by imprisonment for not more than one (1) year, or by both such fine and imprisonment at the discretion of the court having jurisdiction.

(b) Each violation and each day's violation shall constitute a separate offense.

(c) Any person violating this chapter or the rules and regulations issued under this chapter in such a way that causes harm or poses a threat to man, animals or the environment is guilty of a felony and, upon conviction, shall be punished by a fine of not more than Twenty-five Thousand Dollars ($25,000.00) or by imprisonment in the State Penitentiary for a term of not more than twenty (20) years or by both such fine and imprisonment for each violation.

(2) Each violation of this chapter or the applicable rules and regulations shall subject the violator to administrative action as provided for in Sections 69-25-51 through 69-25-63.

HISTORY: Laws, 1997, ch. 449, § 3 eff from and after passage (approved March 25, 1997); Laws, 2005, ch. 533, § 7, eff from and after July 1, 2005.

Cross References — State Entomologist, or designee, as reviewing officer with respect to alleged violation of provisions of this chapter, see § 69-25-51.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 21.

CROP SPRAYING AND LICENSING OF AERIAL APPLICATORS

Article 1. Regulation of Crop Spraying by Aircraft. 69-21-1
Article 3. Agriculture Aviation Licensing Law. 69-21-101
Article 5. Administrative Hearing Procedure to Enforce Rules and Regulations of Board of Agricultural Aviation. [Repealed]. 69-21-151

ARTICLE 1.

REGULATION OF CROP SPRAYING BY AIRCRAFT.

Sec.
69-21-1 through 69-21-27. Repealed.

§§ 69-21-1 through 69-21-27. Repealed.

Repealed by Laws of 2009, ch. 515, § 18, effective from and after passage April 8, 2009.

§ 69-21-1. [Codes, 1942, § 5000-21; Laws, 1952, ch. 169, § 1; Laws, 1971, ch. 475, § 1, eff from and after July 1, 1971.]

§ 69-21-3. [Codes, 1942, § 5000-28; Laws, 1952, ch. 169, § 8, eff from and after passage (approved April 16, 1952).]

§ 69-21-5. [Codes, 1942, § 5000-22; Laws, 1952, ch. 169, § 2; Laws, 1971, ch. 475, § 2; Laws, 2005, ch. 533, § 8, eff from and after July 1, 2005.]

§ 69-21-7. [Codes, 1942, § 5000-23; Laws, 1952, ch. 169, § 3; Laws, 1962, ch. 171, § 1; Laws, 1971, ch. 475, § 3; Laws, 1992, ch. 496, § 34; Laws, 1998, ch. 385, § 1; Laws, 2005, ch. 533, § 9, eff from and after July 1, 2005.]

§ 69-21-9. [Codes, 1942, § 5000-23; Laws, 1952, ch. 169, § 3; Laws, 1962, ch. 171, § 1; Laws, 1971, ch. 475, § 3; Laws, 2005, ch. 533, § 10, eff from and after July 1, 2005.]

§ 69-21-11. [Codes, 1942, § 5000-23; Laws, 1952, ch. 169, § 3; Laws, 1962, ch. 171, § 1; Laws, 1971, ch. 475, § 3, eff from and after July 1, 1971.]

§ 69-21-13. [Codes, 1942, § 5000-23; Laws, 1952, ch. 169, § 3; Laws, 1962, ch. 171, § 1; Laws, 1971, ch. 475, § 3; Laws, 2005, ch. 533, § 11, eff from and after July 1, 2005.]

§ 69-21-15. [Codes, 1942, § 5000-23; Laws, 1952, ch. 169, § 3; Laws, 1962, ch. 171, § 1; Laws, 1971, ch. 475, § 3, eff from and after July 1, 1971.]

§ 69-21-17. [Codes, 1942, § 5000-25; Laws, 1952, ch. 169, § 5; Laws, 1971, ch. 475, § 5, eff from and after July 1, 1971.]

§ 69-21-19. [Codes, 1942, § 5000-24; Laws, 1952, ch. 169, § 4; Laws, 1971, ch. 475, § 4, eff from and after July 1, 1971.]

§ 69-21-21. [Codes, 1942, § 5000-26; Laws, 1952, ch. 169, § 6; Laws, 1971, ch. 475, § 6, eff from and after July 1, 1971.]

§ 69-21-23. [Codes, 1942, § 5000-30; Laws, 1952, ch. 169, § 10; Laws, 1971, ch. 475, § 8, eff from and after July 1, 1971.]

§ 69-21-25. [Codes, 1942, § 5000-29; Laws, 1952, ch. 169, § 9; Laws, 1971, ch. 475, § 7; Laws, 2005, ch. 533, § 12, eff from and after July 1, 2005.]

§ 69-21-27. [Codes, 1942, § 5000-27; Laws, 1952, ch. 169, § 7, eff from and after passage (approved April 16, 1952).]

Editor's Notes — Former § 69-21-1 stated that the purpose of Article 1 of this chapter was to regulate the application of any hormone-type herbicide applied by aircraft. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-3 provided that Article 1 of this chapter did not apply to manual application of herbicides. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-5 provided definitions of terms used in Article 1 of this chapter. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-7 provided that persons could not apply hormone-type herbicides by aircraft without a license. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-9 related to the suspension, revocation or modification of licenses. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-11 related to appointment of secretary of state as agent for process by nonresident applicants and license without examination under certain circumstances for nonresidents. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-13 related to the requirement that permit holder furnish security and actions for damages. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-15 related to allegations and proof in action for damages. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-17 related to certain records and reports to be maintained and furnished. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-19 related to the regulation of materials or methods in application of hormone-type herbicides. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-21 authorized the commissioner to make rules and regulations and establish minimum standards. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-23 related to cooperation with the state or federal government to carry out provisions of article. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-25 related to enforcement provisions. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-27 provided penalties for violations of the article. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

ARTICLE 3.

AGRICULTURE AVIATION LICENSING LAW.

Sec.
69-21-101. Title of article.
69-21-103. Declaration of purpose.
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69-21-119. Fees for licenses.
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69-21-125. Penalties for violations; injunctive relief to prevent violations.
69-21-126. Licensees required to maintain and furnish records and reports regarding certain activities.
69-21-127. Repealed.
69-21-128. Registration of aircraft used for aerial application of agricultural substances.
69-21-129 through 69-2-141. Repealed.

§ 69-21-101. Title of article.

This article shall be known and cited as the "Agricultural Aviation Licensing Law of 2009."

HISTORY: Codes, 1942, § 5011-01; Laws, 1966, ch. 239, § 1; reenacted, Laws, 1983, ch. 304, § 1; reenacted, Laws, 1991, ch. 391, § 1; reenacted without change, Laws, 1996, ch. 447, § 1; reenacted without change, Laws, 1997, ch. 468, § 1; Laws, 2002, ch. 301, § 1; reenacted without change, Laws, 2004, ch. 514, § 1; reenacted without change, Laws, 2006, ch. 494, § 1; reenacted, Laws, 2009, ch. 515, § 1, eff from and after passage (approved Apr. 8, 2009).

Editor's Notes — Laws of 1999, ch. 387, § 14, provides:

"SECTION 14. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed on December 31, 2004."

This section was repealed by operation of law, effective June 30, 2008, and was reenacted by Laws of 2009, ch. 515, § 1, effective from and after April 8, 2009.

Cross References — Pesticide Application Law, see §§ 69-23-101 et seq.

Federal Aspects— Commercial aerial application regulation program created under the Federal Insecticide, Fungicide and Redenticide Act, see 7 USCS §§ 136 through 136y.

OPINIONS OF THE ATTORNEY GENERAL

The Board of Agricultural Aviation has authority over the aerial application of chemicals and pesticides in Mississippi, except for the aerial application of hormone-type herbicides, which fall under the jurisdiction of the Agriculture Department. Chisolm, July 16, 2004, A.G. Op. 04-0281.

RESEARCH REFERENCES

ALR.

Anticompetitive covenants: aerial spray dust business. 60 A.L.R.4th 965.

Law Reviews.

Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 69-21-103. Declaration of purpose.

The purpose of this article is to supervise and regulate for the public good all commercial aerial application within the State of Mississippi, to establish and promote a close working relationship between the agricultural aviation industry and the Mississippi Department of Agriculture and Commerce, and to regulate the licensing of all persons, including pilots, engaged in the aerial application of pesticides, poisons, seeds, fertilizer and chemicals and to require the registration of all commercial agricultural aircraft.

HISTORY: Codes, 1942, § 5011-02; Laws, 1966, ch. 239, § 2; Laws, 1972, ch. 369, § 8; Laws, 1980, ch. 482, § 1; reenacted, Laws, 1983, ch. 304, § 2; reenacted, Laws, 1991, ch. 391, § 2; Laws, 1991, ch. 530, § 10; reenacted without change, Laws, 1996, ch. 447, § 2; reenacted without change, Laws, 1997, ch. 468, § 2; Laws, 2002, ch. 301, § 2; reenacted without change, Laws, 2004, ch. 514, § 2; reenacted without change, Laws, 2006, ch. 494, § 2; reenacted, Laws, 2009, ch. 515, § 2, eff from and after passage (approved Apr. 8, 2009).

Editor's Notes — Laws of 1999, ch. 387, § 14, provides:

"SECTION 14. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed on December 31, 2004."

This section was repealed by operation of law, effective June 30, 2008, and was reenacted by Laws of 2009, ch. 515, § 1, effective from and after April 8, 2009.

Cross References — Administrative hearing procedure to enforce rules and regulations of Board of Agricultural Aviation, see §§ 69-21-151 et seq.

Federal Aspects— Commercial aerial application regulation program created under the Federal Insecticide, Fungicide and Rodenticide Act, see 7 USCS §§ 136 through 136y.

§ 69-21-105. Definitions.

As used in this article, the following terms shall have the meanings hereinafter ascribed to them:

(a) "Aerial application" means the practice of engaging in agricultural aircraft operations.

(b) "Agricultural aircraft operation" means:

(i) Dispensing any pesticide, seed, poison, chemical or fertilizer by aircraft;

(ii) Dispensing any other substance intended for plant nourishment, soil treatment, propagation of plant life or pest control by aircraft; or

(iii) Engaging in dispensing activities directly affecting agriculture, horticulture or forest preservation by aircraft.

(c) "Agricultural substance" means any seed, fertilizer or pesticide that is used, applied, sprayed or administered in an agricultural, horticultural or forestry setting.

(d) "Aircraft" means any contrivance now known or hereafter invented that is used or designed for navigation of or flight in the air over land and water, and that is designed for or adaptable for use in agricultural aircraft operation.

(e) "Applicator" means any person, as defined in this section, who is licensed under this article to engage in the business of agricultural aircraft operations; who may or may not be a pilot.

(f) "Commissioner" means the Commissioner of the Mississippi Department of Agriculture and Commerce.

(g) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(h) "Department" means the Mississippi Department of Agriculture and Commerce.

(i) "Desiccant" means any substances or mixtures of substances intended for artificially accelerating the drying of plant tissues.

(j) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the Class Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs and flies; and to other classes of arthropods whose members are wingless and usually have more than six (6) legs, as for example, spiders, mites, ticks, centipedes and wood lice.

(k) "Person" shall mean any individual, corporation, firm, partnership, company, trust, association or other legal entity.

(*l*) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, mitigating or attracting any pests; and shall also include adjuvants intended to enhance the effectiveness of pesticides; and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

(m) "Pilot" means the operator of an aircraft used in agricultural aircraft operation; however, a pilot may also be a person who is licensed as an applicator under the provisions of this article.

HISTORY: Codes, 1942, § 5011-03; Laws, 1966, ch. 239, § 3; Laws, 1980, ch. 482, § 2; reenacted, Laws, 1983, ch. 304, § 3; reenacted, Laws, 1991, ch. 391, § 3; reenacted without change, Laws, 1996, ch. 447, § 3; reenacted without change, Laws, 1997, ch. 468, § 3; Laws, 2002, ch. 301, § 3; reenacted without change, Laws, 2004, ch. 514, § 3; reenacted without change, Laws, 2006, ch. 494, § 3; reenacted, Laws, 2009, ch. 515, § 3, eff from and after passage (approved Apr. 8, 2009).

Editor's Notes — Laws of 1999, ch. 387, § 14, provides:

"SECTION 14. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed as of December 31, 2004."

This section was repealed by operation of law, effective June 30, 2008, and was reenacted by Laws of 2009, ch. 515, § 3, effective from and after April 8, 2009.

Cross References — Administrative hearing procedure to enforce rules and regulations of Board of Agricultural Aviation, see §§ 69-21-151 et seq.

RESEARCH REFERENCES

Law Reviews.

Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 69-21-107. Repealed.

Repealed by operation of law, effective June 30, 2008, by former Section 69-21-127.

§ 69-21-107. [Codes, 1942, § 5011-04; Laws, 1966, ch. 239, § 4; Laws, 1972, ch. 369, § 9; Laws, 1980, ch. 482, § 3; ch. 560, § 26; reenacted and amended, Laws, 1983, ch. 304, § 4; reenacted, Laws, 1991, ch. 391, § 4; Laws, 1991, ch. 530, § 11; reenacted without change, Laws, 1996, ch. 447, § 4; reenacted without change, Laws, 1997, ch. 468, § 4; Laws, 2002, ch. 301, § 4; reenacted without change, Laws, 2004, ch. 514, § 4; reenacted without change, Laws, 2006, ch. 494, § 4, eff from and after passage (approved Mar. 27, 2006)]

Cross References — Traveling expenses of state officers and employees, generally, see § 25-3-41.

Provision authorizing uniform per diem compensation for officers and employees of state boards, commissions and agencies, see § 25-3-69.

§ 69-21-109. Powers and duties of department.

(1) The department may adopt any rules and regulations as may be necessary or desirable to implement the provisions of this article, to control and regulate the aerial application of agricultural substances in this state, and to restrict the use of any agricultural substances that create hazards to the health, safety and welfare of the citizens of Mississippi. The department shall establish by regulation professional standards for applicators and pilots in the interest of the safety, welfare and general well-being of the citizens of Mississippi and for the protection of the state's fish and wildlife, air, water and soil. No rule or regulation adopted under the terms of this article shall be effective unless it has first been submitted to and approved by the Advisory Board of the Bureau of Plant Industry, a division of the department, established in Section 69-25-3.

(2) The department is authorized to procure samples of agricultural substances before and after they are mixed for testing purposes.

(3) The department is authorized to maintain an office and employ necessary personnel within its budget to carry out the purposes of this article.

(4) It shall be the duty of the department and the department shall have the authority, to enforce this article and all rules and regulations made and

adopted in compliance with this article. The department shall not have jurisdiction to determine liability between private parties.

(5) The department's representatives shall have the authority to enter into any premises where there is reason to believe that an agricultural substance is being or has been applied by a pilot or any applicator's office or place of operations or where he is preparing to apply any of the materials herein stated, for the purpose of enforcement of this article. The department shall have authority to inspect all aircraft and equipment found on the premises, to take samples of any agricultural substances and to inspect and copy any records found on the premises.

(6) The department may cooperate with or enter into formal cooperative agreements with any public or private agency or educational institution of this state or any other state or federal agency for the purpose of carrying out the provisions of this article.

HISTORY: Codes, 1942, § 5011-05; Laws, 1966, ch. 239, § 5; Laws, 1972, ch. 369, § 10; Laws, 1980, ch. 482, § 4; reenacted, Laws, 1983, ch. 304, § 5; reenacted, Laws, 1991, ch. 391, § 5; Laws, 1991, ch. 530, § 12; Laws, 1992, ch. 496, § 35; reenacted without change, Laws, 1996, ch. 447, § 5; reenacted without change, Laws, 1997, ch. 468, § 5; Laws, 2002, ch. 301, § 5; reenacted without change, Laws, 2004, ch. 514, § 5; reenacted without change, Laws, 2006, ch. 494, § 5; reenacted, Laws, 2009, ch. 515, § 4, eff from and after passage (approved Apr. 8, 2009).

Editor's Notes — Laws of 1999, ch. 387, § 14, provides:
"SECTION 14. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed as of December 31, 2004."

This section was repealed by operation of law, effective June 30, 2008, and was reenacted by Laws of 2009, ch. 515, § 4, effective from and after April 8, 2009.

OPINIONS OF THE ATTORNEY GENERAL

The Board of Agricultural Aviation has authority over the aerial application of chemicals and pesticides in Mississippi, except for the aerial application of hormone-type herbicides, which fall under the jurisdiction of the Agriculture Department. Chisolm, July 16, 2004, A.G. Op. 04-0281.

RESEARCH REFERENCES

Law Reviews.

Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 69-21-111. Repealed.

Repealed by operation of law, effective June 30, 2008, by former Section 69-21-127.

§ 69-21-111. [Codes, 1942, § 5011-08; Laws, 1966, ch. 239, § 8; Laws, 1972, ch. 369, § 11; reenacted, Laws, 1983, ch. 304, § 6; reenacted, Laws, 1991, ch. 391, § 6; Laws, 1991, ch. 530, § 13; reenacted without change, Laws, 1996, ch. 447, § 6; reenacted without change, Laws, 1997, ch. 468, § 6; reenacted without change, Laws, 1999, ch. 387, § 6; reenacted without change, Laws, 2006, ch. 494, § 6, eff from and after passage (approved Mar. 27, 2006).]

Editor's Notes — Laws, 1999, ch. 387, § 14, provides:
"SECTION 14. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed as of December 31, 2004."

§ 69-21-113. Licensing of applicators and pilots; application; renewal.

(1) There shall be a license for an applicator and a separate and distinct license for a pilot. It is unlawful for any person to act, operate or do business as an applicator or pilot, or to engage in agricultural aircraft operations, unless that person has the appropriate applicator's or pilot's license issued by the department. Applicator's or pilot's licenses shall only be issued upon application to the department, payment of application fees and meeting any other requirements set by regulation or law. The application shall contain information regarding the applicant's qualifications and proposed operations, and any other information as may be specified by the department. All applicants for a pilot's license must have appropriate Federal Aviation Administration certification.

(2) Applicator's and pilot's licenses are not transferable. Licenses shall be effective for the period prescribed by regulation of the department. Any licensee wishing to have a license renewed must submit an application for renewal with the department at least thirty (30) days before the expiration of the license. If the applicant submits a timely and complete application for renewal, and the department, through no fault of the applicant, fails to reissue the license on or before the expiration date of the existing license, the existing license shall remain in effect until final action on the renewal application is taken by the department. Licenses are subject to modification, revocation or suspension for cause at any time during the effective dates of the license, subject to constitutional requirements.

(3) Any person seeking to obtain a license as an applicator in this state shall submit with his application proof of payment of all ad valorem and other taxes that may be applicable on the applicant's aircraft and other equipment.

(4) All persons licensed under this article shall be known as registered applicators or pilots, and shall be issued a certificate by the department as proof of registration.

HISTORY: Codes, 1942, § 5011-06; Laws, 1966, ch. 239, § 6; Laws, 1980, ch. 482, § 5; reenacted, Laws, 1983, ch. 304, § 7; reenacted, Laws, 1991, ch. 391, § 7; reenacted without change, Laws, 1996, ch. 447, § 7; reenacted without change, Laws, 1997, ch. 468, § 7; Laws, 2002, ch. 301, § 6; reenacted without change, Laws, 2004, ch. 514, § 6; reenacted without change, Laws, 2006, ch. 494, § 7; reenacted, Laws, 2009, ch. 515, § 5, eff from and after passage (approved Apr. 8, 2009).

Editor's Notes — Laws of 1999, ch. 387, § 14, provides:

"SECTION 14. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed as of December 31, 2004."

This section was repealed by operation of law, effective June 30, 2008, and was reenacted by Laws of 2009, ch. 515, § 5, effective from and after April 8, 2009.

Cross References — Exemption of aircraft regulated by the Agricultural Aviation Board of the State of Mississippi from registration requirements, see § 61-15-5.

Administrative hearing procedure to enforce rules and regulations of Board of Agricultural Aviation, see §§ 69-21-151 et seq.

OPINIONS OF THE ATTORNEY GENERAL

If an applicators license was issued to the individual, the license remains valid upon the sale of the agricultural aircraft operation business. Provine, July 28, 2006, A.G. Op. 06-0328.

§ 69-21-115. Financial responsibility.

Any person seeking to obtain a license as an applicator in this state shall submit proof of financial responsibility to the department, and upon obtaining a license, the person shall maintain proof of financial responsibility at all times while the license shall be in effect. Proof of financial responsibility shall be established by:

(a) Depositing with the department a surety bond in favor of any person or persons who may suffer damage by reason of the operation of an aerial application service, issued by a corporate surety company authorized to do business in this state, which surety bond shall be in an amount not less than the amount of financial responsibility required by the rules and regulations of the department. However, the aggregate liability of the surety to all such persons shall not, in any event, exceed the amount of the bond; or

(b) The filing of a general liability insurance policy issued by an insurance company authorized to do business in this state insuring the licensee and any of his agents against liability resulting from the operation of an agricultural aviation service, which insurance policy shall be in an amount deemed as acceptable to the department, as follows:

(i) Not less than One Hundred Thousand Dollars ($100,000.00) for personal injury;

(ii) Not less than Three Hundred Thousand Dollars ($300,000.00) in the aggregate for multiple injuries; and

(iii) Not less than One Hundred Thousand Dollars ($100,000.00) for property damage.

The department shall establish by rules and regulations the amount of financial responsibility to be required of each licensed applicator, but in no event shall the amount of financial responsibility required be less than the amounts prescribed in paragraph (b) of this section.

HISTORY: Codes, 1942, § 5011-07; Laws, 1966, ch. 239, § 7; reenacted, Laws, 1983, ch. 304, § 8; reenacted, Laws, 1991, ch. 391, § 8; reenacted without change, Laws, 1996, ch. 447, § 8; reenacted without change, Laws, 1997, ch. 468,

§ 8; reenacted without change, Laws, 1999, ch. 387, § 8; reenacted without change, Laws, 2006, ch. 494, § 8; reenacted, Laws, 2009, ch. 515, § 6, eff from and after passage (approved Apr. 8, 2009).

Editor's Notes — Laws of 1999, ch. 387, § 14, provides:
"SECTION 14. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed as of December 31, 2004."
This section was repealed by operation of law, effective June 30, 2008, and was reenacted by Laws of 2009, ch. 515, § 6, effective from and after April 8, 2009.

§ 69-21-117. Licensing of nonresident applicators and pilots; reciprocity with other states.

(1) Any person who is a nonresident of this state and who intends to perform agricultural aircraft operations in this state as an applicator or pilot shall obtain the appropriate applicator's or pilot's license under this article and comply with all the other licensing requirements for a resident licensee. Nonresident applicators shall also designate and maintain a resident agent in this state for service of process.

(2) Any person who is duly licensed as an agricultural aviation pilot in another state, whose requirements for licensure as an agricultural aviation pilot are at least equal to those of this state, may be granted an agricultural aviation pilot's license by this state upon the submission of the required application, provided the laws of the state from which the applicant comes grant similar privileges to applicants from this state. The department is authorized to enter into a reciprocity agreement with any state meeting the qualifications of this subsection.

HISTORY: Codes, 1942, § 5011-09; Laws, 1966, ch. 239, § 9; reenacted, Laws, 1983, ch. 304, § 9; reenacted, Laws, 1991, ch. 391, § 9; reenacted without change, Laws, 1996, ch. 447, § 9; reenacted without change, Laws, 1997, ch. 468, § 9; Laws, 2002, ch. 301, § 7; reenacted without change, Laws, 2004, ch. 514, § 7; reenacted without change, Laws, 2006, ch. 494, § 9; reenacted, Laws, 2009, ch. 515, § 7, eff from and after passage (approved Apr. 8, 2009).

Editor's Notes — Laws of 1999, ch. 387, § 14 provides:
"SECTION 14. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed as of December 31, 2004."
This section was repealed by operation of law, effective June 30, 2008, and was reenacted by Laws of 2009, ch. 515, § 7, effective from and after April 8, 2009.

§ 69-21-119. Fees for licenses.

(1) A fee of not more than Five Hundred Dollars ($500.00) for each aircraft owned, operated, used and employed in aerial application by an applicator shall be paid to the department for the issuance or required renewal of a license for an applicator. Each aircraft shall be identified at all times by a device supplied to the registered applicator by the department.

(2) A fee of not more than Two Hundred Fifty Dollars ($250.00) for each pilot engaged in aerial application shall be paid to the department for the

issuance or required renewal of a license for a pilot. Each pilot shall have in his possession at all times an identification card supplied by the department.

(3) All of the fees collected under this section shall be deposited in a special fund in the Treasury of the State of Mississippi and subject to appropriation by the Mississippi Legislature. The fees shall be used by the department for the administration and enforcement of this article.

HISTORY: Codes, 1942, § 5011-10; Laws, 1966, ch. 239, § 10; Laws, 1980, ch. 482, § 6; reenacted, Laws, 1983, ch. 304, § 10; reenacted, Laws, 1991, ch. 391, § 10; Laws, 1992, ch. 437, § 1; reenacted without change, Laws, 1996, ch. 447, § 10; reenacted without change, Laws, 1997, ch. 468, § 10; reenacted without change, Laws, 1999, ch. 387, § 10; Laws, 2000, ch. 329, § 1; Laws, 2002, ch. 301, § 8; reenacted without change, Laws, 2004, ch. 514, § 8; reenacted without change, Laws, 2006, ch. 494, § 10; reenacted, Laws, 2009, ch. 515, § 8, eff from and after passage (approved Apr. 8, 2009).

Editor's Notes — Laws of 1999, ch. 387, § 14 provides:

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This section was repealed by operation of law, effective June 30, 2008, and was reenacted by Laws of 2009, ch. 515, § 8, effective from and after April 8, 2009.

Cross References — Examination of records of various boards generally, see § 7-7-69.

Certification and licensing of aircraft and pilots in general, see §§ 61-11-1 et seq.

Exemption of aircraft regulated by the Agricultural Aviation Board of the State of Mississippi from registration requirements, see § 61-15-5.

§ 69-21-121. Disciplinary action against licensee.

Any person found by the department to have violated any of the provisions of this article, any rule, regulation or written order of the department or any condition or limitation of a license issued by the department shall be subject to disciplinary action. Disciplinary matters shall be conducted as administrative proceedings under Sections 69-25-51 through 69-25-63. Any person found guilty of a violation shall be subject to the administrative or civil penalties as provided by Section 69-25-51.

HISTORY: Codes, 1942, § 5011-11; Laws, 1966, ch. 239, § 11; Laws, 1980, ch. 482, § 7; reenacted, Laws, 1983, ch. 304, § 11; reenacted, Laws, 1991, ch. 391, § 11; reenacted without change, Laws, 1996, ch. 447, § 11; reenacted without change, Laws, 1997, ch. 468, § 11; Laws, 2002, ch. 301, § 9; reenacted without change, Laws, 2004, ch. 514, § 9; reenacted without change, Laws, 2006, ch. 494, § 11; reenacted, Laws, 2009, ch. 515, § 9, eff from and after passage (approved Apr. 8, 2009).

Editor's Notes — Laws of 1999, ch. 387, § 14 provides:

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This section was repealed by operation of law, effective June 30, 2008, and was reenacted by Laws of 2009, ch. 515, § 9, effective from and after April 8, 2009.

RESEARCH REFERENCES

ALR.

Revocation or suspension of airman's license or certificate. 78 A.L.R.2d 1150.

§ 69-21-123. Repealed.

Repealed by operation of law, effective June 30, 2008, by former Section 69-21-127.

§ 69-21-123. [Codes, 1942, § 5011-13; Laws, 1966, ch. 239, § 13; Laws, 1972, ch. 369, § 12; Laws, 1980, ch. 482, § 8; reenacted, Laws, 1983, ch. 304, § 12; reenacted, Laws, 1991, ch. 391, § 12; Laws, 1991, ch. 530, § 14; reenacted without change, Laws, 1996, ch. 447, § 12; reenacted without change, Laws, 1997, ch. 468, § 12; reenacted without change, Laws, 1999, ch. 387, § 12; reenacted without change, Laws, 2006, ch. 494, § 12, eff from and after passage (approved Mar. 27, 2006).]

Editor's Notes — Laws, 1999, ch. 387, § 14 provides:

"SECTION 14. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed as of December 31, 2004."

JUDICIAL DECISIONS

1. In general.

Under substantial compliance rule, failure by injured person to give written notice to state Department of Agriculture, landowner or lessee of land, and applicator, will not be considered fatally defective to bringing negligence action for spray-drift from aerial application, so long as state Department of Agriculture is notified in writing in accordance with notice of claim limitations period for bringing action. Evans v. Boyle Flying Serv., 680 So. 2d 821, 1996 Miss. LEXIS 494 (Miss. 1996).

Notice pursuant to statute of limitations for bringing action for damages for negligent aerial application must be in writing where given to state Department of Agriculture, and should be in writing to others, but may be given orally to others. Evans v. Boyle Flying Serv., 680 So. 2d 821, 1996 Miss. LEXIS 494 (Miss. 1996).

Notice of claim limitation period for bringing negligence action arising from spray-drift from aerial application begins to run on date claimant knew or reasonably should have known of damage from spray; in event spray-drift damage is alleged to growing crops, notice must be given within 60 days form date claimant know or reasonably should have known of damage and prior to harvesting of 25% of allegedly damaged crop, whichever occurs first. Evans v. Boyle Flying Serv., 680 So. 2d 821, 1996 Miss. LEXIS 494 (Miss. 1996).

Notice of claim limitation period for bringing negligence action arising from spray-drift from aerial application began to run during time when property owners discovered that their trees were dying. Evans v. Boyle Flying Serv., 680 So. 2d 821, 1996 Miss. LEXIS 494 (Miss. 1996).

RESEARCH REFERENCES

ALR.

Liability for injury caused by spraying or dusting of crops. 37 A.L.R.3d 833.

Federal preemption of state common-law products liability claims pertaining to pesticides. 101 A.L.R. Fed. 887.

Am. Jur.

3 Am. Jur. 2d, Agriculture § 47.

9 Am. Jur. Proof of Facts 2d, Crop Duster's Failure to Exercise Care in Spraying Crops, §§ 7 et seq. (proof of crop duster's liability for negligence in spraying operations).

Law Reviews.

Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 69-21-125. Penalties for violations; injunctive relief to prevent violations.

(1) Violation of this article, the rules and regulations adopted by the department, a condition included in a license issued by the department or an order issued by the department shall be a misdemeanor punishable by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or by both fine and imprisonment.

(2) The department shall have the authority to file in any court of competent jurisdiction injunctive proceedings against any person violating the provisions of this article or the rules and regulations promulgated by the department for the administration and enforcement of this article.

HISTORY: Codes, 1942, § 5011-12; Laws, 1966, ch. 239, § 12; Laws, 1974, ch. 419; reenacted, Laws, 1983, ch. 304, § 13; reenacted, Laws, 1991, ch. 391, § 13; reenacted without change, Laws, 1996, ch. 447, § 13; reenacted without change, Laws, 1997, ch. 468, § 13; Laws, 2002, ch. 301, § 10; reenacted without change, Laws, 2004, ch. 514, § 10; reenacted without change, Laws, 2006, ch. 494, § 13; reenacted, Laws, 2009, ch. 515, § 10, eff from and after passage (approved Apr. 8, 2009).

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Cross References — Administrative hearing procedure to enforce rules and regulations of Board of Agricultural Aviation, see §§ 69-21-151 et seq.

Penalty assessed by Board of Agricultural Aviation for violating rules and regulations, see § 69-21-165.

Administrative hearing procedure for Bureau of Plant Industry not applicable to aerial applicators licensed under Agricultural Aviation Licensing Law of 1966, see § 69-25-65.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Law Reviews.

Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 69-21-126. Licensees required to maintain and furnish records and reports regarding certain activities.

The department may require any holder of an applicator's or pilot's license to maintain records and furnish reports giving any information with respect to the licensee's purchase and application of any agricultural substances and any other aspect of the licensee's activities under this article.

HISTORY: Laws, 2009, ch. 515, § 11, eff from and after passage (approved Apr. 8, 2009).

§ 69-21-127. Repealed.

Repealed by Laws of 2009, ch. 515, § 20, effective from and after April 8, 2009.

§ 69-21-127. [Laws, 1979, ch. 301, § 17; ch. 357, § 3; Laws, 1983, ch. 304, § 14; Laws, 1991, ch. 391, § 14; Laws, 1996, ch. 447, § 14; Laws, 1997, ch. 468, § 14; Laws, 2002, ch. 301, § 11; Laws, 2004, ch. 514, § 11; Laws, 2006, ch. 375, § 1; Laws, 2006, ch. 494, § 14, eff from and after passage (approved Mar. 27, 2006)]

Editor's Notes — Former § 69-21-127 provided for the repeal of §§ 69-21-101 through 69-21-125, Mississippi Code of 1972, which created the State Board of Agricultural Aviation and prescribed its duties and powers.

§ 69-21-128. Registration of aircraft used for aerial application of agricultural substances.

All aircraft being used for the aerial application of agricultural substances in this state must be registered with the department. Registration shall be valid for a period of time established by rules and regulation.

HISTORY: Laws, 2009, ch. 515, § 12, eff from and after passage (approved Apr. 8, 2009).

§§ 69-21-129 through 69-21-141. Repealed.

Repealed by Laws of 2009, ch. 515, § 19, effective upon and after passage April 8, 2009.

§ 69-21-129. [Laws, 2002, ch. 301, § 12, eff from and after passage (approved Jan. 31, 2002)]

§ 69-21-131. [Laws, 2002, ch. 301, § 13, eff from and after passage (approved Jan. 31, 2002)]

§ 69-21-133. [Laws, 2002, ch. 301, § 14, eff from and after passage (approved Jan. 31, 2002)]

§ 69-21-135. [Laws, 2002, ch. 301, § 15, eff from and after passage (approved Jan. 31, 2002)]

§ 69-21-137. [Laws, 2002, ch. 301, § 16, eff from and after passage (approved Jan. 31, 2002)]

§ 69-21-139. [Laws, 2002, ch. 301, § 17, eff from and after passage (approved Jan. 31, 2002)]

§ 69-21-141. [Laws, 2002, ch. 301, § 18, eff from and after passage (approved Jan. 31, 2002)]

Editor's Notes — Former § 69-21-129 related to notice and hearing for alleged violators of article provisions. For present similar provisions, see §§ 69-21-101 et seq.

Former § 69-21-131 related to the jurisdiction of the Board of Agricultural Aviation and the adoption of rules and regulations. For present similar provisions, see §§ 69-21-101 et seq.

Former § 69-21-133 provided for judicial review of board decisions. For present similar provisions, see §§ 69-21-101 et seq.

Former § 69-21-135 related to civil penalties for violations of board rules and regulations. For present similar provisions, see §§ 69-21-101 et seq.

Former § 69-21-137 related to the payment of penalties, attorney's fees, and court costs. For present similar provisions, see §§ 69-21-101 et seq.

Former § 69-21-139 required that the Board comply with the Open Meetings Act, Public Records Act, and Administrative Procedures Law.

Former § 69-21-141 provided that the Attorney General would act as counsel and attorney for board.

ARTICLE 5.

ADMINISTRATIVE HEARING PROCEDURE TO ENFORCE RULES AND REGULATIONS OF BOARD OF AGRICULTURAL AVIATION [REPEALED].

Sec.
69-21-151 through 69-21-165. Repealed.

§§ 69-21-151 through 69-21-165. Repealed.

Repealed by Laws of 2002, ch. 301, § 19, eff from and after January 31, 2002.

§ 69-21-151. [Laws, 1990, ch. 392, § 1, eff from and after July 1, 1990.]

§ 69-21-153. [Laws, 1990, ch. 392, § 2; Laws, 1997, ch. 468, § 15, eff from and after July 1, 1997.]

§ 69-21-155. [Laws, 1990, ch. 392, § 3; Laws, 1997, ch. 468, § 16, eff from and after July 1, 1997.]

§ 69-21-157. [Laws, 1990, ch. 392, § 4; Laws, 1997, ch. 468, § 17, eff from and after July 1, 1997.]

§ 69-21-159. [Laws, 1990, ch. 392, § 5, eff from and after July 1, 1990.]

§ 69-21-161. [Laws, 1990, ch. 392, § 6, eff from and after July 1, 1990.]

§ 69-21-163. [Laws, 1990, ch. 392, § 7, eff from and after July 1, 1990.]

§ 69-21-165. [Laws, 1990, ch. 392, § 8; Laws, 1997, ch. 468, § 18, eff from and after July 1, 1997.]

Editor's Notes — Former § 69-21-151 was entitled: Purpose of article.

Former § 69-21-153 was entitled: Review of allegation or charge for violating rules and regulations.

Former § 69-21-155 was entitled: Hearing; continuance; court reporter; oath; witnesses; written opinion; notice to violator.

Former § 69-21-157 was entitled: Waiver of right to hearing; assessment of penalties.

Former § 69-21-159 was entitled: Jurisdiction.

Former § 69-21-161 was entitled: Judicial review of Board's decision.

Former § 69-21-163 was entitled: Penalties.

Former § 69-21-165 was entitled: Payment of penalty; attorney's fees; costs.

CHAPTER 23.

MISSISSIPPI PESTICIDE LAW

General Provisions. 69-23-1
Pesticide Application. 69-23-101
Mississippi Waste Pesticide Disposal Act of 1993. [Repealed]. 69-23-301

GENERAL PROVISIONS

Sec.	
69-23-1.	Title of chapter.
69-23-3.	Definitions.
69-23-5.	Prohibited acts; application of Trade Secrets Act.
69-23-7.	Registration.
69-23-8.	Fee rebate for pesticide manufacturers benefiting employment in Mississippi.
69-23-9.	Determinations; rules and regulations; uniformity.
69-23-11.	Enforcement.
69-23-13.	Jurisdiction of commissioner.
69-23-15.	Exemptions.
69-23-17.	Cooperation.
69-23-19.	Repealed.
69-23-21.	Seizures.
69-23-23.	Nonresidents to designate Secretary of State as agent for service of process; bond, when required.
69-23-25.	Experimental use permits.
69-23-27.	Licensing of pesticide dealers.
69-23-29.	Penalties.

§ 69-23-1. Title of chapter.

This chapter shall be known and cited as the Mississippi Pesticide Law of 1975.

HISTORY: Codes, 1942, § 5000-01; Laws, 1950, ch. 452, § 1; Laws, 1975, ch. 319, § 3, eff from and after July 1, 1975.

Cross References — Regulation of drugs, generally, see §§ 41-29-1 et seq.

Pesticide Application Law, see § 69-23-101 et seq.

State Entomologist or designee as reviewing officer with respect to alleged violations of provisions of this chapter, see § 69-25-51.

Regulation of poisons, generally, see §§ 97-27-21 et seq.

JUDICIAL DECISIONS

1. In general.

Ordinance adopted by town pursuant to police power, requiring permit for application of pesticide to public land, was not pre-empted by Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 USCS §§ 136-136y), because (1) language of FIFRA did not explicitly pre-empt local regulation and provided no clear and manifest indication that Congress sought to supplant local authority over pesticide regulation impliedly, (2) legislative history was at best ambiguous, and (3) there was no actual conflict either between FI-

FRA in the ordinance or between FIFRA and local regulation generally. Wisconsin Pub. Intervenor v. Mortier, 501 U.S. 597, 111 S. Ct. 2476, 115 L. Ed. 2d 532, 1991 U.S. LEXIS 3632 (U.S. 1991).

In products liability suit decided under Arkansas law, evidence permitted jury finding that herbicide applied on plaintiff's farm to control various pest-grasses in soybean fields was not defective. Yellow Bayou Plantation, Inc. v. Shell Chemical, Inc., 491 F.2d 1239, 1974 U.S. App. LEXIS 9412 (5th Cir. Miss. 1974).

§ 69-23-3. Definitions.

Definitions for the purpose of this chapter:

(a) The term "pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, mitigating or attracting any pests; and shall also include adjuvants intended to enhance the effectiveness of pesticides; and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

(b) The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, mitigating or attracting insects which may be present in any environment whatsoever.

(c) The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungi.

(d) The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating rodents or any other vertebrate animals which the commissioner shall declare to be pests.

(e) The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed.

(f) The term "adjuvant" means any substance that, when added to a pesticide is intended to aid, modify or enhance its effectiveness by its properties of serving as a wetting agent, detergent, spreading agent, synergist, deposit builder, adhesive, surfactant, emulsifying agent, deflocculating agent, water modified, or similar agent, with or without toxic properties of its own, and when sold in a package or container separate from that of the pesticide with which it is to be used.

(g) The term "nematicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes.

(h) The term "plant regulator" means any substance or mixture of substances intended through physiological action, for accelerating the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants, or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(i) The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(j) The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

(k) The term "disinfectant" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating bacteria or other harmful microorganisms; or otherwise frees from infection; commonly applied to inanimate objects.

(*l*) The term "bactericide" means a substance capable of destroying a given species of vegetative bacteria but not necessarily capable of destroying bacterial spores.

(m) The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms as, for example, beetles, bugs, bees, flies, and to other allied classes of orthropods whose members are wingless and usually have more than six (6) legs as, for example, spiders, mites, ticks, centipedes, and wood lice.

(n) The term "nematodes" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

(o) The term "fungi" means all nonchlorophyll-bearing thallophytes (that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria except those on or in living man or other animals, and those in or on processed food, beverages or pharmaceuticals.

(p) The term "weed" means any plant which grows where not wanted.

(q) The term "ingredient statement" means:

(i) A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients in the pesticide;

(ii) When the pesticide contains arsenic in any form, the ingredient statement shall also include the percentages of total and water soluble arsenic, each calculated as elemental arsenic;

(iii) In the case of spray adjuvants, the ingredient statement need contain only the names of the functioning agents and the total percentage of the constituents ineffective as spray adjuvants.

(r) The term "active ingredient" means:

(i) In the case of a pesticide other than a plant regulator, defoliant or desiccant an ingredient which will prevent, destroy, repel, attract or mitigate insects, nematodes, fungi, rodents, weeds or other pests;

(ii) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

(iii) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

(iv) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue;

(v) In the case of a spray adjuvant, any ingredient which will act as a functioning agent.

(s) The term "inert ingredient" means an ingredient which is not an active ingredient.

(t) The term "antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(u) The term "person" means any individual, partnership, association, corporation or organized group of persons, whether incorporated or not.

(v) The term "commissioner" means the Commissioner of Agriculture and Commerce, or his agent.

(w) The term "entomologist" means the State Entomologist of the Mississippi Department of Agriculture and Commerce.

(x) The term "registrant" means the person registering any pesticide pursuant to the provisions of this chapter.

(y) The term "label" means the written, printed, or graphic matter on, or attached to, the pesticide, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide.

(z) The term "labeling" means all labels and other written, printed or graphic matter:

(i) Upon the pesticide or any of its containers or wrappers;

(ii) Accompanying the pesticide at any time;

(iii) To which reference is made on the label or in literature accompanying the pesticide, except when accurate, nonmisleading reference is made to current official publications of the United States Environmental Protection Agency, Department of Agriculture or Interior, the United States Public Health Service, State Experiment Station, state agricultural colleges, or other similar federal institutions or official agencies of this state, or other states authorized by law to conduct research in the field of pesticides.

(aa) The term "adulterated" shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the articles, or if any valuable constituent of the article has been wholly or in part abstracted.

(bb) The term "misbranded" shall apply to any pesticide:

(i) If its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading to any particular;

(ii) If it is an imitation of or is offered for sale under the name of another pesticide;

(iii) If its labeling does not contain a statement of the use classification under which the product is registered;

(iv) If the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, together with any requirements imposed under the Federal Insecticide, Fungicide and Rodenticide Act, are adequate for the protection of health and environment;

(v) If the label does not contain a warning or caution statement which may be necessary and, if complied with, together with any requirements which may be imposed under the Federal Insecticide, Fungicide and Rodenticide Act, are adequate to protect health and environment;

(vi) If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase; the ingredient statement may appear prominently on another part of the container as permitted under the Federal Insecticide, Fungicide and Rodenticide Act if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(vii) If any word, statement or other information required by or under the authority of this chapter to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(viii) If in the case of an insecticide, fungicide or herbicide, or nematicide when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such pesticide; or

(ix) In the case of a plant regulator, defoliant or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticide; provided, that physical or physiological effect on plants or parts thereof shall not be deemed to be injurious when this is the purpose for which the plant regulator, defoliant or desiccant was applied, in accordance with the label claims and recommendations.

(cc) The term "environment" includes water, air, land and all plants and man and other animals living therein and inter-relationships which exist among these.

(dd) The term "EPA" means the United States Environmental Protection Agency.

(ee) The term "imminent hazard" means a situation which exists when the continued use of a pesticide during the time required for cancellation under this chapter would likely result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered by the Secretary of the Interior.

(ff) The term "pest" means:

(i) Any insects, rodents, nematodes, fungi, weeds, or

(ii) Other forms of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the commissioner declares to be a pest.

(gg) The term "licensed pesticide dealer" means any person who distributes or offers for sale restricted use pesticides and/or state restricted use pesticides.

(hh) The term "Pesticide dealer manager" means an individual (who may be the owner) supervising pesticide distribution at one (1) outlet holding a pesticide dealer license.

(ii) The term "protect health and environment" means protection against any unreasonable adverse effects on the environment.

(jj) The term "restricted use pesticide" means any pesticide classified for restricted use by EPA or the commissioner. Any pesticide which is not classified for restricted use by January 1, 1976, will be deemed to be for general use. In order not to deprive the citizens of this state of the benefits derived from newly developed pesticides or uses which may be restricted by EPA after January 1, 1976, the commissioner may register such pesticides for restricted use if that is the only method by which they may be made available to the citizens of Mississippi.

(kk) The term "state restricted pesticide" means any pesticide use which, when used as directed or in accordance with a widespread and commonly recognized practice, the commissioner determines subsequent to a hearing requires additional restrictions for that use to protect the environment, including man, lands, beneficial insects, animals, crops and wildlife other than pests.

(*ll*) The term "unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

(mm) The term "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, as amended.

HISTORY: Codes, 1942, § 5000-02; Laws, 1950, ch. 452, § 2; Laws, 1964, 1st Ex. Sess. ch. 32; Laws, 1968, ch. 248, § 1; Laws, 1970, ch. 266, § 1; Laws, 1971, ch. 509, § 1; Laws, 1975, ch. 319, § 4; Laws, 1991, ch. 530, § 15, eff from and after July 1, 1991.

Cross References — Notification of Department of Agriculture and Commerce when chemical, as defined in this section, located in underground water, exceeds or is likely to exceed state standards and chemical's source is not within Commission's jurisdiction, see § 49-17-26.

Federal Aspects— The Federal Insecticide, Fungicide and Rodenticide Act is codified at 7 USCS §§ 136 et seq.

JUDICIAL DECISIONS

1. In general.

Anthrax vaccines do not fall in the category of economic poisons. Livestock Services, Inc. v. American Cyanamid Co., 244 Miss. 531, 142 So. 2d 210, 1962 Miss. LEXIS 473 (Miss. 1962).

§ 69-23-5. Prohibited acts; application of Trade Secrets Act.

(1) It shall be unlawful for any person to distribute, sell or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

(a) Any pesticide which has not been registered pursuant to the provisions of Section 69-23-7 or any pesticide if any of the claims made for it or any of the directions for its use differ from its composition or representations made in connection with its registration; provided, that in the discretion of the commissioner a change in the labeling or formula of a pesticide may be made within a reregistration period within requiring registration of the product if the registration is amended to reflect such change and if the changes will not violate any provisions of FIFRA or this chapter.

(b) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one (1) through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) The name and address of the manufacturer, registrant or person for whom manufactured;

(ii) The name, brand, or trademark under which said article is sold;

(iii) The net weight or measure of the content, subject, however, to such reasonable variations as the commissioner may permit;

(iv) A batch number from which the date of packaging can be determined for certain pesticides which have been determined to deteriorate in relatively short periods, when requested by the commissioner;

(v) The EPA registration number assigned to each establishment in which it was produced and the EPA registration number assigned to the pesticide if required by regulation under FIFRA;

(vi) Any other information required by this chapter or regulation promulgated thereunder; except that this subsection (b) shall not apply:

(i) To the transportation, within the meaning of this section, of refined petroleum naphtha or refined petroleum distillate, by tank truck, or by tank cars, or in tanks by rail;

(ii) To the delivery of refined petroleum naphtha or refined petroleum distillate from a storage tank, or tank truck, in a quantity of not less than fifty (50) gallons, if, at the time of such delivery the person delivering the said material delivers to the person to whom the delivery is made, or his agent or representative, a written or printed statement containing the information, with respect to the material delivered, required by the provision of clauses (i), (ii) and (iii) of this subsection (b);

Provided, however, that the commissioner may designate that certain specific pesticides may be distributed or offered for sale by the manufacturer and/or registrant in bulk, in which case the label information required and any other statements required by this chapter must be stated in or attached to the invoice; and in addition, a copy of said invoice must be given to the purchaser at the time the pesticide is delivered. In addition to the above, the commissioner may set rules and regulations for the sale, dispensing, storing, handling and transportation of pesticides in bulk.

(c) Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in Section 69-23-9, unless the label shall bear, in addition to any other matter required by this chapter:

(i) The skull and crossbones;

(ii) The word "poison" prominently, in red on a background of distinctly contrasting color;

(iii) A statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

(d) Any pesticide which has not been colored or discolored pursuant to the provisions of this chapter.

(e) Any pesticide which is adulterated or misbranded.

(f) Any pesticide in containers which are unsafe due to damage.

(2) It shall be unlawful:

(a) For any person to detach, alter, deface or destroy, in whole or in part, any label or labeling provided for in this chapter or regulations promulgated hereunder, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this chapter;

(b) For any person to use for his own advantage or to reveal, other than to the commissioner or proper officials or employees of the state or the EPA, or to the courts of this state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in preparation of antidotes, any information relative to formulas of products acquired by authority of this chapter or any information judged by the commissioner as containing or relating to trade secrets or commercial or financial information obtained by authority of this chapter and marked as confidential by the registrant;

(c) For any person to distribute any pesticide labeled for restricted use to any person, or his agent who is not certified to use or purchase such pesticide;

(d) For any person to use or cause to be used any pesticide in a manner inconsistent with its labeling or to regulations of the commissioner if those regulations further restrict the uses provided on the labeling;

(e) For any person to handle, transport, store, display, distribute or dispose of any pesticide or container in such a manner as to endanger man and his environment.

The commissioner is hereby authorized, empowered and directed to authorize and grant a permit to any person, firm or corporation to dispose of any existing stock of pesticide it may have on hand at the time this chapter becomes effective, including all packages, labels and containers; provided that such stock is packaged and labeled in accordance with federal laws and regulations governing the packaging and labeling of such products.

(3) In addition to any criminal remedy set forth in subsection (2), remedies for misappropriation of a trade secret shall be governed by the Mississippi Uniform Trade Secrets Act, Sections 75-26-1 through 75-26-19.

HISTORY: Codes, 1942, § 5000-03; Laws, 1950, ch. 452, § 3; Laws, 1952, ch. 167; Laws, 1958, ch. 151; Laws, 1970, ch. 266, § 2; Laws, 1971, ch. 509, § 2; Laws, 1975, ch. 319, § 5; Laws, 1984, ch. 341; Laws, 1990, ch. 442, § 15, eff from and after July 1, 1990.

Cross References — Registration of pesticides meeting requirements under this section, see § 69-23-7.

Requirement that Commissioner of Environmental Quality register as pesticide article, composition and labeling of which comply with requirements of this section, see § 69-23-7.

Seizure of economic poisons, see § 69-23-21.

OPINIONS OF THE ATTORNEY GENERAL

The Board of Agricultural Aviation has authority over the aerial application of chemicals and pesticides in Mississippi, except for the aerial application of hormone-type herbicides, which fall under the jurisdiction of the Agriculture Department. Chisolm, July 16, 2004, A.G. Op. 04-0281.

RESEARCH REFERENCES

ALR.

Products liability: Recovery for injury or death resulting from intentional inhalation of product's fumes or vapors to produce intoxicating or similar effect. 50 A.L.R.5th 275.

What constitutes use of pesticide in manner inconsistent with its labeling, so as to violate § 12(a)(2)(G) of Federal Insecticide, Fungicide, and Rodenticide Act (7 USCS § 136j(a)(2)(G)). 69 A.L.R. Fed. 835.

Federal pre-emption of state common-law products liability claims pertaining to pesticides. 101 A.L.R. Fed. 887.

Am. Jur.

17 Am. Jur. Proof of Facts 2d 459, Breach of Warranty as to Effectiveness of Insecticide.

§ 69-23-7. Registration.

(1) Every pesticide which is distributed, sold or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered in the office of the commissioner, and such registration shall be renewed annually. Products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels bear a designation identifying the products as the same pesticide, may be registered as a single pesticide. Additional names and labels shall be added by supplement statements during the current period of registration. The registrant shall file with the commissioner a statement including:

(a) The name and address of the registrant and the name and address of the person whose name will appear on the label if other than the registrant;

(b) The name of the pesticide;

(c) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including directions for use and the use classification as provided for in FIFRA;

(d) If requested by the commissioner, a full description of the tests made and the results upon which the claims are based. In the case of renewal of registration, a statement shall be required only for information which is different from that furnished when the pesticide was registered or last reregistered; and

(e) Any other information required by the commissioner which may be prescribed by regulation.

(2) The registrant shall pay an annual fee of Two Hundred Dollars ($200.00) for each brand or grade of pesticide registered. All of the fees collected under this section shall be deposited in a special fund in the Treasury of the State of Mississippi and subject to appropriation by the Mississippi Legislature. The fees shall be used by the Mississippi Department of Agriculture and Commerce for enforcement of this chapter. The Department of Agriculture and Commerce may contract with the Department of Environmental Quality for a groundwater monitoring program.

(3) The commissioner, whenever he deems it necessary in the administration of this chapter, may require the submission of the complete formula of any pesticide. If it appears to the commissioner that the composition of the articles warrants the proposed claims for it, and if the article and its labeling and other material required to be submitted comply with the requirements of Section 69-23-5, he shall register the article, if the article is registered under FIFRA. If the state is certified by the administrator of EPA to register pesticides pursuant to Section 24(c) of FIFRA, the commissioner may register the article to meet special local needs if he determines that the registration will not be in violation of FIFRA.

(4) If it does not appear to the commissioner that the article warrants the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this chapter, the commissioner may refuse to register the article. In order to protect the public, the commissioner may, at any time, cancel or suspend the registration of a pesticide if he determines that it does not comply with this chapter or creates an imminent hazard. If he receives a notice from the Commission on Environmental Quality under Section 49-17-26 in relation to state underground water quality standards, he may order the relabeling of any pesticide, or suspend or cancel the registration of any pesticide or any use of any pesticide, or adopt a regulation in accordance with Section 69-23-9 to protect the underground water resources, as defined in the Federal Safe Drinking Water Act. He may advise EPA of the manner in which a federally registered pesticide fails to comply with FIFRA and suggest the necessary corrections. Regulatory action taken under this subsection shall be conducted in accordance with Sections 69-25-51 through 69-25-63.

(5) Notwithstanding any other provision of this chapter, registration is not required in case of a pesticide shipped from one plant within this state to another plant within this state operated by the same person.

HISTORY: Codes, 1942, § 5000-04; Laws, 1950, ch. 452, § 4; Laws, 1958, ch. 150; Laws, 1971, ch. 509, § 3; Laws, 1975, ch. 319, § 6; Laws, 1987, ch. 523, § 4; Laws, 1991, ch. 530, § 16; Laws, 1993, ch. 613, § 6; Laws, 2001, ch. 559, § 1; Laws, 2005, ch. 533, § 13, eff from and after July 1, 2005.

Editor's Notes — Laws of 1987, ch. 523, § 7, effective from and after July 1, 1987, provides as follows:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for fees or charges due or accrued under the Mississippi Economic Poison Law of 1950 or the Mississippi Fertilizer Law of 1970 prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of such laws are expressly continued in full force, effect and operation for the purpose of the assessment and collection fees due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Duty of Department of Agriculture and Commerce to proceed in accordance with this section and other laws upon notification of existence of chemical in underground water exceeding or likely to exceed state standards and whose source is not within jurisdiction of Commission on Environmental Quality, see § 49-17-26.

Unlawfulness of failing to register a pesticide before distribution, sale, or offer to sell, see § 69-23-5.

Prohibited acts regarding economic poisons, see § 69-23-5.

Exemptions from penalties, see § 69-23-15.

Deposit of fertilizer registration fees into special fund as set forth in this section, see § 75-47-7.

Federal Aspects— The Federal Insecticide, Fungicide, and Rodenticide Act is codified at 7 USCS §§ 136 et seq., and section 24(c) of that Act is codified at 7 USCS § 136a.

OPINIONS OF THE ATTORNEY GENERAL

The Board of Agricultural Aviation has authority over the aerial application of chemicals and pesticides in Mississippi, except for the aerial application of hormone-type herbicides, which fall under the jurisdiction of the Agriculture Department. Chisolm, July 16, 2004, A.G. Op. 04-0281.

RESEARCH REFERENCES

ALR.

Validity, Construction, and Operation of State and Municipal Act or Regulation Requiring Notice of Pesticide and Herbicide Use. 18 A.L.R.6th 793.

Rights of nonregistrants under Federal Environmental Pesticide Control Act of 1972 (7 USCS §§ 136-136y) to oppose cancellation of pesticide use registrations. 48 A.L.R. Fed. 756.

§ 69-23-8. Fee rebate for pesticide manufacturers benefiting employment in Mississippi.

(1) A pesticide manufacturer having paid the pesticide registration fee required by Section 69-23-7(2) may make written application to the department on a form provided by the department for a rebate of not more than fifty percent (50%) of each pesticide registration fee paid by the pesticide manufacturer. The application must be submitted at the time of registration.

(2) Upon receipt of a written application for a rebate of the pesticide registration fee, the commissioner may grant a rebate of not more than fifty percent (50%) of each pesticide registration fee to the pesticide manufacturer if the commissioner finds, based upon the application submitted by the pesticide manufacturer, public records and facts subject to official notice that the operations of the pesticide manufacturer substantially benefit the economy of Mississippi and employment in Mississippi.

HISTORY: Laws, 2001, ch. 559, § 2, eff from and after July 1, 2001.

§ 69-23-9. Determinations; rules and regulations; uniformity.

(1) The commissioner is authorized:

(a) To declare as a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles or substances;

(b) To determine whether pesticides registered under authority of Section 24(c) of FIFRA are highly toxic to man as described in federal regulations;

(c) To determine standards of coloring or discoloring for pesticides and to subject pesticides to the requirements of Section 69-23-5(1).

(2) The commissioner may adopt, amend or repeal rules and regulations for carrying out the provisions of this chapter, including, but not limited to, rules and regulations providing for the collection and examination of samples; the safe handling, transportation, storage, display, distribution and disposal of pesticides and their containers; protecting the environment; labeling and adopting state restricted pesticide uses.

(3) In order to avoid confusion endangering the public health resulting from diverse requirements, particularly as to the labeling and coloring of pesticides, and to avoid increased costs to the people of this state due to the necessity of complying with such diverse requirements in the manufacture and sale of such pesticides, it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to such pesticides. To this end the commissioner is authorized to adopt such regulations, applicable to and in conformity with the primary standards established by this chapter, as have been or may be prescribed by the United States government for pesticides.

(4) No action taken by the commissioner under this section shall be effective unless and until such action is approved by the advisory board created under Section 69-25-3, Mississippi Code of 1972.

HISTORY: Codes, 1942, § 5000-05; Laws, 1950, ch. 452, § 5; Laws, 1971, ch. 509, § 4; Laws, 1975, ch. 319, § 7; Laws, 2004, ch. 518, § 1; Laws, 2005, ch. 533, § 14, eff from and after July 1, 2005.

Cross References — Definition of terms relating to economic poisons, see § 69-23-3.
Unlawfulness of failure to label pesticides, see § 69-23-5.
Prohibited acts concerning economic poisons, see § 69-23-5.
Adoption of regulation in accordance with this section to protect underground water

resources from hazardous pesticides, see § 69-23-7.

Adoption of regulation in accordance with this section to protect underground water resources, in connection with Mississippi Waste Disposal Pesticide Act, see § 69-23-7.

Adoption of regulation in accordance with this section for protection of underground water resources from fertilizer contamination, see § 75-47-7.

Federal Aspects— Federal Safe Drinking Water Act, see 21 USCS § 349, 42 USCS §§ 300f-300j-9.

§ 69-23-11. Enforcement.

(1) The commissioner or his employees, with proper identification and during normal working hours, shall have free access to all places of business, factories, buildings, carriages, cars, stores, warehouses and other places where pesticides are offered for sale or kept for sale or distribution or use and application, and shall have authority to inspect or open any container of pesticide and to take a sample for the purpose of examination and analysis. It shall be the duty of the commissioner to take such samples and deliver them to the State Chemist for examination and analysis.

(2) It shall be the duty of the State Chemist to cause as many analyses to be made of samples delivered to him by the commissioner as may be necessary to properly carry into effect the intent of this chapter. He shall make reports of such analysis to the commissioner and to the manufacturer, firm or person responsible for placing on the market the pesticide represented by the samples.

(3) If it appears that any pesticide fails to comply with the provisions of this chapter, or if provisions of this chapter are violated, the commissioner may proceed with appropriate action as provided in this chapter or under the administrative hearing procedures provided in Section 69-25-51 et seq. If, in the opinion of the commissioner, it appears that the provisions of the chapter have been violated, the commissioner may refer the facts to the county attorney, district attorney or Attorney General.

(4) It shall be the duty of each county attorney, district attorney or Attorney General to whom any such violation is reported to cause appropriate proceedings to be instituted and prosecuted in the appropriate court without delay.

(5) The commissioner shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this chapter.

HISTORY: Codes, 1942, § 5000-06; Laws, 1950, ch. 452, § 6; Laws, 1971, ch. 509, § 5; Laws, 1975, ch. 319, § 8; Laws, 1997, ch. 449, § 1; Laws, 2005, ch. 533, § 15, eff from and after July 1, 2005.

Cross References — State Entomologist or designee as reviewing officer with respect to alleged violations of provisions of this chapter, see § 69-25-51.

§ 69-23-13. Jurisdiction of commissioner.

Jurisdiction in all matters pertaining to the distribution, sale and transportation of pesticides is vested exclusively in the commissioner.

HISTORY: Codes, 1942, § 5000-12; Laws, 1950, ch. 452, § 12; Laws, 1971, ch. 509, § 10; Laws, 1975, ch. 319, § 9, eff from and after July 1, 1975.

JUDICIAL DECISIONS

1. In general.

Ordinance adopted by town pursuant to police power, requiring permit for application of pesticide to public land, was not pre-empted by Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 USCS §§ 136-136y), because (1) language of FIFRA did not explicitly pre-empt local regulation and provided no clear and manifest indication that Congress sought to supplaint local authority over pesticide regulation impliedly, (2) legislative history was at best ambiguous, and (3) there was no actual conflict either between FIFRA in the ordinance or between FIFRA and local regulation generally. Wisconsin Pub. Intervenor v. Mortier, 501 U.S. 597, 111 S. Ct. 2476, 115 L. Ed. 2d 532, 1991 U.S. LEXIS 3632 (U.S. 1991).

§ 69-23-15. Exemptions.

(1) The penalties provided for violations of Section 69-23-5 (1) shall not apply to:

(a) Any carrier while lawfully engaged in transporting a pesticide within this state if such carrier shall, upon request, permit the commissioner or his employees to copy all records showing the transaction in and movement of the articles;

(b) Public officials of this state and the federal government engaged in the performance of their official duties in administering state or federal pesticide laws or regulations or while engaged in pesticide research.

(c) The manufacturer or shipper of a pesticide for experimental use only:

(i) By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides; or

(ii) By others if the pesticides shipper or manufacturer holds a valid experimental use permit as provided for by Section 69-23-25 or by EPA.

(2) No article shall be deemed in violation of this chapter when intended solely for export to a foreign country, and when prepared or packaged according to the specifications or directions of the purchaser. If not so exported, all the provisions of this chapter shall apply.

HISTORY: Codes, 1942, § 5000-07; Laws, 1950, ch. 452, § 7; Laws, 1971, ch. 509, § 6; Laws, 1975, ch. 319, § 10, eff from and after July 1, 1975.

§ 69-23-17. Cooperation.

The commissioner is authorized and empowered to cooperate with, and enter into cooperative agreements with, any other agency of this state, the United States Government, or its agencies or any public or private agency for the purpose of carrying out the provisions of this chapter and FIFRA and securing uniformity of regulations.

HISTORY: Codes, 1942, § 5000-10; Laws, 1950, ch. 452, § 10; Laws, 1971, ch. 509, § 9; Laws, 1975, ch. 319, § 11, eff from and after July 1, 1975.

§ 69-23-19. Repealed.

Repealed by Laws of 1997, ch. 449, § 5, eff from and after passage (approved March 25, 1997).

§ 69-23-19. [Codes, 1942, § 5000-08; Laws, 1950, ch. 452, § 8; Laws, 1971, ch. 509, § 7]

Editor's Notes — Former § 69-23-19 provided for penalties for violations of the Mississippi Pesticide Law. For current provisions affecting penalties for violations of the Mississippi Pesticide Law, see § 69-23-29.

§ 69-23-21. Seizures.

(1) Any pesticide that is distributed, sold or offered for sale within this state or delivered for transportation or transported to intrastate commerce or between points within this state through any point outside this state shall be liable to be proceeded against in any circuit court in any county of the state where it may be found and seized for confiscation and condemnation:

(a) If it is adulterated or misbranded;

(b) If it has not been registered under the provisions of Section 69-23-7;

(c) If it fails to bear on its label the information required by this chapter;

(d) If it is a white power pesticide and is not colored as required under this chapter.

(2) If the article is condemned, it shall, after entry of decree, be disposed of by destruction or sale, as the court may direct, and the proceeds, if such article is sold, less legal costs, shall be paid to the commissioner for transmission to the General Funds of the State Treasury.

(3) When a decree of condemnation is entered against the article, court costs and fees and storage and other proper expenses shall be awarded against the person shown to be the claimant of the article.

(4) The remedy in this section is supplemental to and not in replacement of the remedies under Sections 69-25-51 through 69-25-63.

HISTORY: Codes, 1942, § 5000-09; Laws, 1950, ch. 452, § 9; Laws, 1971, ch. 509, § 8; Laws, 1975, ch. 319, § 12; Laws, 2005, ch. 533, § 16, eff from and after July 1, 2005.

§ 69-23-23. Nonresidents to designate Secretary of State as agent for service of process; bond, when required.

(1) Any nonresident individual, partnership, association, firm, or corporation desiring to distribute, sell, or offer for sale within this state any product described in this chapter, and any such nonresident who may be subject otherwise to the provisions of such chapter, shall file a written power of attorney designating the Secretary of State as the agent of such nonresident upon whom service of process may be had in the event of any suit against said

nonresident individual, partnership, firm, association, or corporation; and such power of attorney shall be so prepared in such form as to render effective the jurisdiction of the courts of Mississippi over such nonresident applicants and make such applicants amenable to the jurisdiction of the courts of this state. Provided, however, that any such nonresident who has a duly appointed resident agent upon whom process may be served as provided by law shall not be required to designate the Secretary of State as such agent. The Secretary of State shall be allowed such fees therefor as provided by law for designating resident agents. The commissioner shall be furnished with a copy of such designation of the Secretary of State or of a resident agent, such copy to be duly certified by the Secretary of State.

(2) The commissioner may also require such nonresident subject to the provisions of this chapter to furnish to him a fidelity bond or other security satisfactory to him and conditioned that the principal therein named shall pay for any and all damages suffered by any person by reason of the negligence of the principal or his or its agents in the conduct of said business and shall honestly conduct said business and as otherwise conditioned by said commissioner, provided that in no case shall a bond or other security less than Ten Thousand Dollars ($10,000.00) be required. A copy of said bond duly certified by the commissioner shall be received as evidence in all courts of this state without further proof. Any person having a right of action against such person, firm, association or corporation may bring suit against the principal and sureties on such bond. Should the surety furnished become unsatisfactory, said applicant shall execute a new bond and should he fail to do so, it shall be the duty of the commissioner to cancel his license and give him notice of said fact, and it shall be unlawful thereafter for such person to engage in said business without obtaining a new license.

HISTORY: Codes, 1942, § 5000-14; Laws, 1952, ch. 266; Laws, 1971, ch. 509, § 11; Laws, 2005, ch. 533, § 17, eff from and after July 1, 2005.

JUDICIAL DECISIONS

1. In general.

The intent of the legislature in requiring nonresidents to qualify was to make them amenable to the process of the state courts in actions by the state plant board to enforce the provisions of the act and to provide to a citizen of Mississippi redress for an injury against a manufacturer, distributor, or seller of economic poisons. Livestock Services, Inc. v. American Cyanamid Co., 244 Miss. 531, 142 So. 2d 210, 1962 Miss. LEXIS 473 (Miss. 1962).

Since anthrax vaccine is not an economic poison, a foreign manufacturer and distributor which appointed the Secretary of State as its agent for service of process under this act did not subject itself to the jurisdiction of the state court in an action for damages arising out of an alleged breach of warranty in reference to anthrax vaccine. Livestock Services, Inc. v. American Cyanamid Co., 244 Miss. 531, 142 So. 2d 210, 1962 Miss. LEXIS 473 (Miss. 1962).

§ 69-23-25. Experimental use permits.

Upon the condition that the State of Mississippi is certified by the

Administrator of the United States Environmental Protection Agency to issue experimental use permits for the testing of pesticides, the commissioner of agriculture and commerce may prescribe regulations for the issuance of such experimental permits. The commissioner may issue such experimental permit if he determines that the applicant needs the permit to obtain information necessary to register a pesticide under the provisions of this chapter.

HISTORY: Laws, 1975, ch. 319, § 1, eff from and after July 1, 1975.

§ 69-23-27. Licensing of pesticide dealers.

(1) It is unlawful for any person to act as a licensed pesticide dealer without being licensed by the commissioner. A license shall be required for each location or outlet located within this state from which such pesticides are distributed. Any dealer who has no pesticide outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license for his principal out-of-state location or outlet.

(2) Application for a license shall be submitted on a form prescribed by the commissioner, and shall include the name and address of the applicant, the name of the pesticide dealer manager, the address of each outlet, the name of the resident agent if the dealer is not a resident of this state, and any other information required by the commissioner.

(3) This section shall not apply to (a) a licensed pesticide applicator who sells pesticides only as an integral part of his pesticide application service where such pesticides are applied by the commercial applicator; or (b) any federal, state, county or municipal agency which provides pesticides only for its own programs.

(4) The commissioner may set standards and qualifications for licensing of pesticide dealers and dealer managers to determine their competency.

(5) Licenses for pesticide dealers will expire on December 31 of each year and must be renewed annually.

(6) The commissioner may prescribe rules and regulations pertaining to licensing of pesticide dealers, including but not limited to record keeping, and may at any time cancel, suspend or revoke a pesticide dealer license when he finds there has been a failure or refusal to comply with the provisions of this chapter or regulations adopted hereunder. The regulatory action authorized in this subsection shall be governed by Sections 69-25-51 through 69-25-63.

HISTORY: Laws, 1975, ch. 319, § 2; Laws, 2005, ch. 533, § 18, eff from and after July 1, 2005.

§ 69-23-29. Penalties.

(1)(a) Any person violating any of the provisions of this chapter or the rules and regulations issued under this chapter is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment for not more than one (1) year or by both such fine and imprisonment at the discretion of the court having jurisdiction.

(b) Each violation and each day's violation for continuing acts, shall constitute a separate offense.

(c) Any person violating any of the provisions of this chapter or the rules and regulations issued under this chapter in such a way that causes harm or poses a threat to man, animals or the environment is guilty of a felony and, upon conviction, shall be punished by a fine of not more than Twenty-Five Thousand Dollars ($25,000.00) or by imprisonment in the State Penitentiary for a term of not more than twenty (20) years or by both such fine and imprisonment for each violation.

(2) Each violation of this chapter or the applicable rules and regulations shall subject the violator to administrative action as provided for in Sections 69-25-51 through 69-25-63.

HISTORY: Laws, 1997, ch. 449, § 4; Laws, 2005, ch. 533, § 19, eff from and after July 1, 2005.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

PESTICIDE APPLICATION

Sec.

69-23-101. Short title.
69-23-103. Administration.
69-23-105. Declaration of purpose.
69-23-107. Definitions.
69-23-109. Commissioner to adopt regulations; reports; regulation by other agencies.
69-23-111. Licenses and permits.
69-23-113. Nonresident commercial applicators to designate Secretary of State as agent for service of process.
69-23-115. Violations.
69-23-117. Records to be maintained by commercial applicators.
69-23-119. Exemptions.
69-23-121. Cooperative extension service to conduct courses of instruction and training.
69-23-123. Cooperative agreements.
69-23-125. Enforcement; investigations.
69-23-127. Injunctive relief.
69-23-129. Repealed.
69-23-131. When training, examination and certification of applicators may begin.
69-23-133. Advisory committee.
69-23-135. Penalties.

§ 69-23-101. Short title.

Sections 69-23-101 through 69-23-135 may be known as the "Mississippi Pesticide Application Law of 1975."

HISTORY: Laws, 1975, ch. 318, § 1; Laws, 2005, ch. 533, § 20, eff from and after July 1, 2005.

RESEARCH REFERENCES

ALR.

Federal preemption of state common law products liability claims pertaining to pesticides. 101 A.L.R. Fed. 887.

§ 69-23-103. Administration.

Sections 69-23-101 through 69-23-135 shall be administered by the Commissioner of the Mississippi Department of Agriculture and Commerce, or his agent, herein referred to as the "commissioner."

HISTORY: Laws, 1975, ch. 318, § 2; Laws, 2005, ch. 533, § 21, eff from and after July 1, 2005.

§ 69-23-105. Declaration of purpose.

The purpose of Sections 69-23-101 through 69-23-135 is to provide a means for the state certification of applicators of restricted use pesticides required under the Federal Insecticide, Fungicide and Rodenticide Act, and to regulate in the public interest the use and application of restricted use pesticides, except as the application of restricted use pesticides is regulated under Sections 69-19-1 through 69-19-15 or 69-21-101 through 69-21-128, and to designate the Mississippi Department of Agriculture and Commerce as the agency responsible for administering a plan for certification of applicators of restricted use pesticides and to cooperate with the United States Environmental Protection Agency as provided for in the Federal Insecticide, Fungicide and Rodenticide Act, and for other purposes.

HISTORY: Laws, 1975, ch. 318, § 3; Laws, 1991, ch. 530, § 17; Laws, 2005, ch. 533, § 22; Laws, 2009, ch. 515, § 13, eff from and after passage (approved Apr. 8, 2009).

Editor's Notes — Section 69-19-11 referred to in this section was repealed by Laws of 1997, ch. 449, § 5 eff from and after passage (approved March 25, 1997).

Federal Aspects— Federal Insecticide, Fungicide and Rodenticide Act, see 7 USCS §§ 136 et seq.

§ 69-23-107. Definitions.

When used in the context of Sections 69-23-101 through 69-23-135, the following terms shall be ascribed the following meanings:

(a) "Commissioner" means the Commissioner of Agriculture and Commerce of the State of Mississippi.

(b) "Certification" means the recognition by a state that a person is competent and thus authorized to use or supervise the use of restricted use pesticides.

(c) "Certified applicator" means any person who is certified to use or supervise the use of any restricted use pesticide covered by this certification.

(d) "Commercial applicator" means a certified applicator (whether or not he is a private applicator with respect to some uses) who uses or supervises the use of any pesticide that is classified for restricted use for any purpose or on any property other than as provided by the definition of "private applicator."

(e) "Division" means the Bureau of Plant Industry within the Regulatory Office of the Mississippi Department of Agriculture and Commerce.

(f) "Division of Plant Industry" means the Bureau of Plant Industry within the Regulatory Office of the Mississippi Department of Agriculture and Commerce.

(g) "EPA" means the United States Environmental Protection Agency.

(h) "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, as amended.

(i) "License" means a license, certificate or permit.

(j) "Person" means any individual, partnership, association, corporation or organized group of persons, whether incorporated or not.

(k) "Pest" means:

(i) Any insects, rodents, nematodes, fungi, weeds; and

(ii) Other forms of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria or other microorganism on or in living man or other living animals) that the commissioner declares to be a pest.

(*l*) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, mitigating or attracting any pests; and shall also include adjuvants intended to enhance the effectiveness of pesticides; and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

(m) "Private applicator" means a certified applicator who uses or supervises the use of any pesticide that is classified for restricted use for purposes of producing any agricultural commodity on property owned, rented or controlled by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person, subject to regulations adopted under authority granted by Sections 69-23-101 through 69-23-135.

(n) "Public applicator" means any individual who applies restricted use pesticides as an employee of a state agency, municipal corporation, public utility, or other governmental agency. This term does not include employees who work under direct "on-the-job" supervision of a public applicator.

(o) "Restricted use pesticide" means any pesticide classified for restricted use by EPA or by the commissioner.

(p) "State restricted pesticide use" means any pesticide use which, when used as directed or in accordance with a widespread and commonly recognized practice, the commissioner determines subsequent to a hearing, requires additional restrictions for that use to protect the environment including man, lands, beneficial insects, animals, crops and wildlife, other than pests.

(q) "Under the direct supervision of a certified applicator" means, unless otherwise prescribed by its labeling, a pesticide that is to be applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though that certified applicator is not physically present at the time and place the pesticide is applied.

(r) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

(s) Words and terms as defined in Sections 69-19-1 through 69-19-15, 69-21-101 through 69-21-128 and 69-23-1 through 69-23-29, when used in Sections 69-23-101 through 69-23-135 shall have the same meaning ascribed therein.

HISTORY: Laws, 1975, ch. 318, § 4; Laws, 1991, ch. 530, § 18; Laws, 2005, ch. 533, § 23; Laws, 2009, ch. 515, § 14, eff from and after passage (approved Apr. 8, 2009).

Editor's Notes — Section 69-19-11 referred to in (s) was repealed by Laws of 1997, ch. 449, § 5, eff from and after passage (approved march 25, 1997). For current provisions, see § 69-19-15.

Federal Aspects— Federal Insecticide, Fungicide and Rodenticide Act, see 7 USCS §§ 136 et seq.

§ 69-23-109. Commissioner to adopt regulations; reports; regulation by other agencies.

(1) The commissioner may adopt regulations to carry out the provisions of Sections 69-23-1 through 69-23-135.

(2) In adopting regulations, the commissioner shall give consideration to pertinent research findings and recommendations of other agencies of this state or federal government. The commissioner shall report to the Legislature on or before February 1 of each year any regulation promulgated under this section which is more restrictive than applicable federal regulations.

(3) Regulations promulgated by the commissioner under Sections 69-23-1 through 69-23-135 shall not be effective until approved by the advisory board created under Section 69-25-3.

(4) In order to eliminate inequitable application or establishment of opposing regulations, the authority to regulate any matter pertaining to the registration, sale, handling, distribution, notification of use, application and use of pesticides shall vest solely in the Commissioner of Agriculture and Commerce, except where other state agencies, including the Agricultural Aviation Board, exercise such regulatory authority under state law.

HISTORY: Laws, 1975, ch. 318, § 5; Laws, 1992, ch. 539, § 1; Laws, 2005, ch. 533, § 24, eff from and after July 1, 2005.

§ 69-23-111. Licenses and permits.

(1) After October 21, 1976, it is unlawful for any person to engage in the

application or use of any pesticide that is restricted by EPA or the commissioner, except as provided for and defined in Sections 69-19-1 through 69-19-15, 69-21-101 through 69-21-128 and 69-23-1 through 69-23-29, without being certified or licensed by the commissioner.

(2) The commissioner may classify licenses or permits to be issued under Sections 69-23-101 through 69-23-135. Separate classifications and subclassifications may be specified by the commissioner in conformity with FIFRA. Each classification may be subject to separate requirements of testing procedures.

(3) Application for license shall be made on a form provided by the commissioner and shall contain information regarding the applicant's qualifications, proposed operations, and license classification or classifications as prescribed by regulations.

(4) The commissioner shall require each applicant for a certified applicator's license to demonstrate competency by a written or oral examination, or any other equivalent procedure as may be adopted by the commissioner by regulation, that he possesses adequate knowledge with respect to the proper use and application of pesticides in the particular categories or classification for which application for license is made. The commissioner may cooperate with other state, federal and private agencies in preparing, administering and evaluating examinations or other equivalent procedures, including training, for determining competency of certified applicators, and shall consider and be guided by certification requirements set forth by EPA.

(5) If the commissioner finds the applicant qualified in the classification for which he has applied, he shall issue a certified applicator's license limited to that classification. Expiration dates of licenses may be established by regulation, unless revoked, suspended, denied, cancelled or modified prior thereto by the commissioner for cause as hereinafter provided.

HISTORY: Laws, 1975, ch. 318, § 6; Laws, 2005, ch. 533, § 25; Laws, 2009, ch. 515, § 15, eff from and after passage (approved Apr. 8, 2009).

Editor's Notes — Section 69-19-11 referred to in (1) was repealed by Laws of 1997, ch. 449, § 5, eff from and after passage (approved March 25, 1997). For current provisions, see § 69-19-15.

Cross References — Responsibility of county mosquito control commission as to control and elimination of pests of a public health or annoyance nature, see § 41-27-9.

Federal Aspects— Federal Insecticide, Fungicide and Rodenticide Act, see 7 USCS §§ 136 et seq.

§ 69-23-113. Nonresident commercial applicators to designate Secretary of State as agent for service of process.

Any nonresident commercial applicator applying for a license under Sections 69-23-101 through 69-23-135 to operate in the state shall file a written power of attorney designating the Secretary of State as the agent of such nonresident upon whom service of process may be had in the event of any suit against the nonresident person, and such power of attorney shall be prepared and in such form as to render effective the jurisdiction of the courts of this state over such nonresident applicant. Any nonresident who has a duly appointed resident agent upon whom process may be served as provided by law shall not be required to designate the Secretary of State as such agent. The Secretary of State shall be allowed such fees therefor as provided by law for designating resident agents. The commissioner shall be furnished with a copy of such designation of the Secretary of State or of a resident agent, such copy to be duly certified by the Secretary of State.

HISTORY: Laws, 1975, ch. 318, § 7; Laws, 2005, ch. 533, § 26, eff from and after July 1, 2005.

§ 69-23-115. Violations.

It is unlawful for a person to:

(a) Make false or fraudulent claims through any media misrepresenting the effect of materials or methods to be used;

(b) Conduct pest control operations in a faulty, careless or negligent manner or to operate faulty or unsafe pest control equipment;

(c) Fail to comply with the provisions of Sections 69-23-101 through 69-23-135, or the regulations adopted hereunder;

(d) Fail to keep and maintain records required by Sections 69-23-101 through 69-23-135 or to make reports when required;

(e) Make false or fraudulent records, invoices or reports;

(f) Use fraud or misrepresentation in making application for a license or renewal for a license;

(g) Aid or abet any person in evading the provisions of Sections 69-23-101 through 69-23-135, or allow one's license to be used by another person;

(h) Impersonate any state or federal official;

(i) Commit a violation under FIFRA;

(j) Use any restricted use pesticide in a manner which is inconsistent with its labeling; or

(k) Commit any other act or omission specified in the regulations adopted under Sections 69-23-101 through 69-23-135.

HISTORY: Laws, 1975, ch. 318, § 8; Laws, 2005, ch. 533, § 27, eff from and after July 1, 2005.

§ 69-23-117. Records to be maintained by commercial applicators.

Commercial applicators shall maintain records with respect to the application of pesticides. Such relevant information as the commissioner may deem necessary and the length of time that these records shall be maintained may be specified by the commissioner, and upon request the licensee shall furnish a copy of such records.

HISTORY: Laws, 1975, ch. 318, § 9; Laws, 2005, ch. 533, § 28, eff from and after July 1, 2005.

§ 69-23-119. Exemptions.

(1) Any person duly licensed and certified under Section 69-19-1 through 69-19-15 or 69-21-101 through 69-21-128, is exempted from the licensing provisions of Sections 69-23-101 through 69-23-135.

(2) The commissioner may exempt any other persons as may be exempted by federal regulations.

(3) The commissioner may exempt public applicators from the requirements of Sections 69-23-113 and 69-23-117.

HISTORY: Laws, 1975, ch. 318, § 10; Laws, 2005, ch. 533, § 29; Laws, 2009, ch. 515, § 16, eff from and after passage (approved Apr. 8, 2009).

Editor's Notes — Section 69-19-11 referred to in this section was repealed by Laws of 1997, ch. 449, § 5 eff from and after passage (approved March 25, 1997). For current provisions, see § 69-19-15.

Section 69-23-119 referred to in (1) was repealed by Laws of 1997, ch. 449, § 5, eff from and after passage (approved March 25, 1997). For current provisions, see § 69-19-15.

Cross References — Responsibility of county mosquito control commission as to control and elimination of pests of a public health or annoyance nature, see § 41-27-9.

§ 69-23-121. Cooperative extension service to conduct courses of instruction and training.

The Mississippi Cooperative Extension Service shall conduct courses of instruction and training for the purpose of carrying out the provisions of Sections 69-23-101 through 69-23-135.

HISTORY: Laws, 1975, ch. 318, § 11; Laws, 2005, ch. 533, § 30, eff from and after July 1, 2005.

§ 69-23-123. Cooperative agreements.

The commissioner may cooperate with or enter into formal cooperative agreements with any public or private agency or educational institution of this state or any other state or federal agency for the purpose of carrying out the provisions of Sections 69-23-101 through 69-23-135, to encourage training of certified applicators and securing uniformity of regulations.

HISTORY: Laws, 1975, ch. 318, § 12; Laws, 2005, ch. 533, § 31, eff from and after July 1, 2005.

Cross References — Responsibility of county mosquito control commission as to control and elimination of pests of a public health or annoyance nature, see § 41-27-9.

§ 69-23-125. Enforcement; investigations.

The commissioner shall enforce the provisions of Sections 69-23-101 through 69-23-135. The commissioner or his representative may enter upon public or private premises at reasonable times for the purpose of enforcing said sections, and may investigate complaints of injury or accidents resulting from use of restricted use pesticides.

HISTORY: Laws, 1975, ch. 318, § 13; Laws, 2005, ch. 533, § 32, eff from and after July 1, 2005.

Cross References — State Entomologist or designee as reviewing officer with respect to alleged violations of provisions of this chapter, see § 69-25-51.

§ 69-23-127. Injunctive relief.

The commissioner may obtain an injunction to enjoin the violation of Sections 69-23-101 through 69-23-135 or any regulations issued under those sections in the chancery court of the county in which the violation occurs.

HISTORY: Laws, 1975, ch. 318, § 14; Laws, 2005, ch. 533, § 33, eff from and after July 1, 2005.

§ 69-23-129. Repealed.

Repealed by Laws of 1997, ch. 449, § 5, eff from and after passage (approved March 25, 1997).

§ 69-23-129 [Laws, 1975, ch. 318, § 15.].

Editor's Notes — Former § 69-23-129 provided for penalties for violations of the Mississippi Pesticide Application Law. For current provisions affecting penalties for violations of the Mississippi Pesticide Law, see § 69-23-135.

§ 69-23-131. When training, examination and certification of applicators may begin.

(1) Regulations may be promulgated by the commissioner after passage.

(2) Training, examination and certification of applicators may begin after passage in order for applicants to be certified by October 21, 1976.

(3) The requirement that applicators be certified in order to use or supervise the use of restricted use pesticides shall not be effective until October 21, 1976, or at a later date if permitted by EPA.

HISTORY: Laws, 1975, ch. 318, § 16, eff from and after October 1, 1975.

§ 69-23-133. Advisory committee.

The commissioner shall appoint an advisory committee, and by regulation establish the composition of the committee to include representatives from the agriculture, agribusiness and related industries.

The purpose of the committee shall be to advise and assist the commissioner in developing regulations and plans for implementing the provisions of Sections 69-23-101 through 69-23-135 and a pesticide regulatory program to meet the requirements of FIFRA.

HISTORY: Laws, 1975, ch. 318, § 17; Laws, 2005, ch. 533, § 34, eff from and after July 1, 2005.

§ 69-23-135. Penalties.

(1)(a) Any person violating any of the provisions of this chapter or the rules and regulations issued under this chapter at a minimum is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment for not more than one (1) year or by both such fine and imprisonment at the discretion of the court having jurisdiction.

(b) Each violation and each day's violation for continuing acts shall constitute a separate offense.

(c) Any person violating any of the provisions of this chapter or the rules and regulations issued under this chapter in such a way that causes harm or poses a threat to man, animals or the environment is guilty of a felony and, upon conviction, shall be punished by a fine of not more than Twenty-Five Thousand Dollars ($25,000.00) or by imprisonment in the State Penitentiary for a term of not more than twenty (20) years or by both such fine and imprisonment for each violation.

(2) Each violation of this chapter or the rules and regulations issued under this chapter shall subject the violator to administrative action as provided for in Sections 69-25-51 through 69-25-63.

HISTORY: Laws, 1997, ch. 449, § 2; Laws, 2005, ch. 533, § 35, eff from and after July 1, 2005.

Editor's Notes — Section 69-25-55, referred to in (2), was repealed by Laws of 2005, ch. 533, § 36, effective from and after July 1, 2005.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

MISSISSIPPI WASTE PESTICIDE DISPOSAL ACT OF 1993 [REPEALED]

Sec.
69-23-301 through 69-23-313. Repealed.

§§ 69-23-301 through 69-23-313. Repealed.

Repealed by Laws of 1993, ch. 613, § 8, eff on July 1, 1998.

§ 69-23-301 through § 69-23-313. [Laws, 1993, ch. 613, §§ 1 to 5, 7, 8, eff from and after passage (approved April 12, 1993)]

Editor's Notes — Former §§ 69-23-301 through 69-23-313 related to the Mississippi Waste Pesticide Disposal Act of 1993.

CHAPTER 24.

FERTILIZING MATERIALS AND ADDITIVES

Sec.

69-24-1. Short title.
69-24-3. Administration.
69-24-5. Definitions.
69-24-7. Labeling.
69-24-9. Registration of each separate soil or plant amendment product.
69-24-11. Refusal or cancellation of registration; hearing.
69-24-13. Inspection fees; tonnage payments; penalties; disclosure of information.
69-24-15. Sampling, inspection and analysis.
69-24-17. Penalties for deficient analysis; determination of commercial values.
69-24-19. Misbranding.
69-24-21. Adulteration.
69-24-23. "Stop sale, use or removal" orders.
69-24-25. Violations; notice; hearings; penalties; warnings; injunctive relief.
69-24-27. Adoption and enforcement of rules and regulations.

§ 69-24-1. Short title.

This chapter shall be known as the "Mississippi Soil and Plant Amendment Law of 1978".

HISTORY: Laws, 1978, ch. 322, § 1, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 42, 47, 49, 50.

CJS.
3 C.J.S., Agriculture §§ 89 et seq.

§ 69-24-3. Administration.

This chapter shall be administered by the commissioner of agriculture and commerce of the State of Mississippi, hereinafter referred to as the commissioner, and the State Chemist of Mississippi, as specified in the following sections.

HISTORY: Laws, 1978, ch. 322, § 2, eff from and after July 1, 1978.

§ 69-24-5. Definitions.

As used in this chapter, the following terms shall have the definition ascribed to them herein unless the context requires otherwise:

(a) "Amending ingredient" means a substance which will improve the physical or chemical characteristics of the soil or improve crop production or quality when applied to the soil, plant or seed.

(b) "Brand" means the term, designation, trade mark, product name or other specific designation under which individual soil or plant amendments are offered for sale.

(c) "Bulk" means in nonpackaged form.

(d) "Distribute" means to import, consign, manufacture, produce, compound, mix or blend soil or plant amendments, or offer for sale, sell, barter or otherwise supply soil or plant amendments in this state.

(e) "Distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes or blends soil or plant amendments, or who offers for sale, sells, barters, or otherwise supplies soil or plant amendments in this state.

(f) "Inert ingredients" means the non-amending ingredients present in soil or plant amendments.

(g) "Ingredient form" means the chemical compound, such as salt, chelate, oxide, acid, etc., of an ingredient or the physical form of an ingredient.

(h) "Investigational allowance" means an allowance for variations inherent in the taking, preparation and analysis of an official sample of soil or plant amendment.

(i) "Label" means the display of all written, printed or graphic matter upon the immediate container or statement accompanying a soil or plant amendment.

(j) "Labeling" means all written, printed, or graphic matter, upon or accompanying any soil or plant amendment, or advertisements, brochures, posters, or television or radio announcements used in promoting the sale of such soil or plant amendment.

(k) "Minimum percentage" means that percent of soil or plant amending ingredient, when mentioned in any form or manner, that must be present before the product will be accepted for registration.

(*l*) "Official sample" means any sample of soil or plant amendment taken by the commissioner or his agent and designated as "Official" by the commissioner and state chemist.

(m) "Percent" or "percentage" means parts per hundred by weight.

(n) "Person" means individual, partnership, association, firm, or corporation.

(o) "Plant amendment" means any substance applied to plants or seeds which is intended to improve germination, growth, yield, product quality, reproduction, flavor or other desirable characteristics of plants except commercial fertilizers, soil amendments, agricultural liming materials, unmanipulated animal and vegetable manures, pesticides, plant regulators, Rhizobium legume inoculants, and other materials which may be exempted by regulation; provided that, commercial fertilizer shall be included if it is represented to contain, as an amending ingredient, a substance other than a recognized plant food element or is represented as promoting plant growth by means other than supplying a recognized plant food element.

(p) "Registrant" means the person who registers soil or plant amendments under the provisions of this chapter.

(q) "Soil amendment" means and includes any substance which is intended to improve the physical, chemical or other characteristics of the soil or improve crop production, except the following: commercial fertilizers, plant amendments, agricultural liming materials, agricultural gypsum, unmanipulated animal manures, topsoil, unmanipulated vegetable manures, pesticides, and herbicides, Rhizobium legume inoculants, and other material which may be exempted by regulation; provided that commercial fertilizer shall be included if it is represented to contain, as an amending ingredient, a substance other than a recognized plant food element or is represented as promoting plant growth by means other than supplying a recognized plant food element.

(r) "Ton" means a net weight of two thousand (2,000) pounds avoirdupois.

(s) "Weight" means the weight of material as offered for sale.

HISTORY: Laws, 1978, ch. 322, § 3, eff from and after July 1, 1978.

§ 69-24-7. Labeling.

(1) The following information shall appear on the fact or display side of all containers or accompany bulk shipments of soil or plant amendments; it shall be in a readable and conspicuous form, and shall be considered the label:

(a) net weight

(b) brand name

(c) minimum guaranteed analysis amending ingredients

name of ingredient . . . . . . ________ %

and continued until all soil and/or plant amending ingredients are listed and percentages given.

(d) inert ingredients. . . . . . ________ %

(e) purpose of product

(f) direction for application

(g) name and address of the registrant

(2) No information or statement shall appear on any package, label, delivery slip, or advertising matter which is false or misleading to the purchaser as to the use, value, quality, analysis, type or composition of the soil or plant amendment.

(3) The commissioner and State Chemist may require proof of claims made for any soil or plant amendments. If no claims are made, the commissioner and State Chemist may require proof obtained in controlled scientific experiments of usefulness and value of the soil or plant amendment. For evidence of proof they may rely on experimental data, evaluation, or advice supplied from such sources as the director of the Mississippi Agricultural and Forestry Experiment Station and the director of the Mississippi Cooperative Extension Service. The experimental results shall be related to Mississippi conditions for which the product is intended. The commissioner and State Chemist may accept or reject other sources of proof cited as additional evidence in their evaluation of soil or plant amendments.

(4) No amending ingredient may be listed or guaranteed on the labels or labeling of soil or plant amendments without the permission of the commis-

sioner and State Chemist. The commissioner and State Chemist may allow a soil or plant amending ingredient to be listed and guaranteed on the label or labeling if satisfactory supportive data is provided to substantiate the value and usefulness of such soil or plant amending ingredient. The commissioner and State Chemist may rely on outside sources such as the director of the Mississippi Agricultural and Forestry Experiment Station and the director of the Mississippi Cooperative Extension Service for assistance in evaluating the data submitted. When a soil amending ingredient is permitted to be listed or guaranteed, its concentration in the soil or plant amendment must be determinable by approved laboratory methods, and it shall be subject to inspection and analysis. The commissioner and State Chemist may prescribe methods and procedures of inspection and analysis of the soil or plant amending ingredient. The commissioner and State Chemist may stipulate, by regulation, the minimum qualities of soil or plant amending ingredient(s) required in soil or plant amendments.

(5) The commissioner and State Chemist may allow labeling by volume rather than weight in subsection (1) for liquid products. The commissioner and State Chemist may allow payment of inspection fees on a calculated weight equivalent to that volume.

HISTORY: Laws, 1978, ch. 322, § 4, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 47, 49, 50.

CJS.
3 C.J.S., Agriculture § 93.

§ 69-24-9. Registration of each separate soil or plant amendment product.

(1) Each separately identified product shall be registered before being distributed in this state. The application for registration shall be submitted to the commissioner and State Chemist on the form furnished or approved by the commissioner and shall be accompanied by a fee of Twenty-five Dollars ($25.00) per product. Upon approval by the commissioner and State Chemist, a copy of the registration shall be furnished to the applicant. All registrations expire on June 30, following registration. Each manufacturer shall submit to the commissioner and State Chemist copies of labels and advertising literature with the registration request for each soil or plant amendment.

(2) A distributor shall not be required to register any brand of soil or plant amendment which is already registered under this chapter by another person, providing the label and labeling do not differ in any respect.

(3) Before registering any soil or plant amendment, the commissioner and State Chemist may require evidence to substantiate the claims made for the soil or plant amendment and proof of the value and usefulness of the soil or plant amendment as in Section 69-24-7(3), (4).

(4) The commissioner and State Chemist may, by regulation, set the

minimum amount of any soil or plant amending ingredients that must be present before a soil or plant amendment can be registered and sold.

(5) If the application for renewal of the soil or plant amendment registration provided for in this section is not filed prior to July 1 of any one year, a penalty of Twenty-five Dollars ($25.00) shall be assessed and added to the original fee and shall be paid by the applicant before the renewal soil or plant amendment registration shall be issued; provided, however, that such penalty shall not apply if the applicant furnishes an affidavit that he has not distributed this soil or plant amendment subsequent to the expiration of his prior registration.

HISTORY: Laws, 1978, ch. 322, § 5, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 49, 50.

CJS.
3 C.J.S., Agriculture § 92.

§ 69-24-11. Refusal or cancellation of registration; hearing.

The commissioner and State Chemist are authorized and empowered to refuse registration of a soil or plant amendment if they find the brand of soil or plant amendment violates any section of this chapter or the rules and regulations promulgated under this chapter. The commissioner and State Chemist are authorized and empowered to cancel the registration of any brand of soil or plant amendments upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of this chapter, or any rules or regulations promulgated thereunder; provided, that no registration shall be revoked until the registrant shall have been given the opportunity to appear for a hearing by the commissioner and State Chemist.

HISTORY: Laws, 1978, ch. 322, § 6, eff from and after July 1, 1978.

§ 69-24-13. Inspection fees; tonnage payments; penalties; disclosure of information.

(1) There shall be paid to the commissioner for all soil or plant amendments distributed in this state an inspection fee of Thirty-five Cents ($.35) per ton. However, products sold in packages of ten (10) pounds or less or one (1) gallon or less shall be subject to an annual inspection fee of Fifty Dollars ($50.00) in lieu of the Thirty-five Cents ($.35) per ton fee. The annual inspection fee shall be paid upon date of registration.

(2) Every person who distributes a soil or plant amendment in the state shall file with the commissioner, on forms furnished by him, an annual statement setting forth the number of net tons of each soil or plant amendment distributed in the state during the previous year. The statement shall be due within thirty (30) days following the reporting year. The statement shall be

accompanied by a payment of the inspection fee at the rate of Thirty-five Cents ($.35) per ton, except as specified in subsection (1) of this section.

(3) When more than one (1) distributor is involved in the distribution of a soil or plant amendment product, the last registrant who distributes to a nonregistrant (dealer or consumer) is responsible for reporting the tonnage and paying the inspection fees unless the reporting and paying of fees has been made by a prior distributor of the soil or plant amendment product. If the statement is not filed or is filed falsely, or the inspection fee is not paid within thirty (30) days following the reporting year, the commissioner and State Chemist may revoke the registration of the products and a penalty of Ten Dollars ($10.00) per day for each subsequent day shall be assessed against the registrant. The inspection fee and the penalty shall constitute a debt and become the basis for a judgment against the registrant, which may be collected by the commissioner and in any court of competent jurisdiction without prior demand.

(4) The statement required by this section shall not be a public record, and it shall be a misdemeanor for any person to divulge any information given in the statement which would reveal the business operations of a person or registrant filing the statement; provided, however, that nothing contained in this subsection shall be construed to prevent or make unlawful the use of information concerning the business operation of any registrant in any action, suit, or proceeding instituted under this chapter, including any civil action for collection of unpaid inspection fees, which action is hereby authorized and which shall be as an action at law in the name of the commissioner.

(5) All fees paid to the commissioner for registration, inspection, or penalties for product deficiencies shall be deposited into the General Fund account of the State of Mississippi.

HISTORY: Laws, 1978, ch. 322, § 7, eff from and after July 1, 1978; Laws, 2018, ch. 305, § 1, eff from and after July 1, 2018.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 49, 50.

CJS.
3 C.J.S., Agriculture § 91.

§ 69-24-15. Sampling, inspection and analysis.

(1) It is the duty of the commissioner and State Chemist, who may act through their duly authorized agents, to sample, inspect, make analyses of, and test soil or plant amendments distributed within the State of Mississippi at any time and place, and to such an extent they may deem necessary to determine whether such soil or plant amendments are in compliance with the provisions of this chapter. The commissioner, individually or through his agents, is authorized to enter upon any public or private premises of carriers during regular business hours in order to have access to soil or plant amendments subject to provisions of the chapter and the rules and regulations pertaining thereto, and to the records relating to their distribution.

(2) The methods of analysis and sampling shall be those adopted by the State Chemist from sources such as the Association of Official Analytical Chemists, or other sources acceptable to the State Chemist.

(3) The results of official analyses of soil or plant amendments and portions of official samples shall be distributed by the State Chemist as provided by regulation.

HISTORY: Laws, 1978, ch. 322, § 8, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 49, 50.

CJS.
3 C.J.S., Agriculture § 91.

§ 69-24-17. Penalties for deficient analysis; determination of commercial values.

(1) If the analysis shall show that any soil or plant amendment falls short of the guaranteed analysis in any one (1) soil or plant amending ingredient, or in total soil or plant amending ingredients, beyond "investigational allowances" as established by regulation, a penalty of three (3) times the commercial value of such deficiency shall be assessed against the registrant by the commissioner on all the products represented by the sample analyzed.

(2) All penalties assessed under this section shall be paid to the commissioner within thirty (30) days after the date of notice to the registrant from the Department of Agriculture and Commerce. The commissioner shall deposit the amount of the penalty into the General Funds account of the State Treasury.

(3) Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction for a judgment as to the justification of such penalties imposed under subsection (1) and (2) above.

(4) The penalties payable in subsections (1) and (2) above shall in no manner be construed as limiting the consumer's right to bring a civil action in damage against the registrant paying said civil penalties.

(5) For the purpose of determining commercial values to be applied under the provisions of this section, the commissioner shall determine from the registrant's sales invoice the values charged for the soil or plant amending ingredients. If no invoice is available or if the invoice fails to provide sufficient information, the commissioner may use other methods to determine values. The values so determined shall be used in determining and assessing penalties.

HISTORY: Laws, 1978, ch. 322, § 9, eff from and after July 1, 1978.

§ 69-24-19. Misbranding.

No person shall distribute a misbranded soil or plant amendment. A soil or plant amendment shall be deemed to be misbranded if:

(a) its labeling is false or misleading in any particular;

(b) if it is distributed under the name of another soil or plant amendment;

(c) if it is not labeled as required in Sections 69-24-7 and 69-24-9 and in accordance with regulations prescribed under this chapter;

(d) if it purports to be or is represented as a soil or plant amendment or represented as containing a soil or plant amendment, unless such soil or plant amendment conforms to the definitions of identity, if any, prescribed by regulation. In the adopting of such regulations, the commissioner and State Chemist shall give due regard to commonly accepted definitions and official terms such as those issued by the Association of American Plant Food Control Officials; or

(e) if it does not conform to ingredient form, minimums, labeling and investigational allowances in the regulations adopted by the commissioner and State Chemist.

HISTORY: Laws, 1978, ch. 322, § 10, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 49, 50.

CJS.
3 C.J.S., Agriculture § 93.

§ 69-24-21. Adulteration.

No person shall distribute an adulterated soil or plant amendment. A soil or plant amendment shall be deemed to be adulterated if:

(a) it contains any deleterious or harmful agent in sufficient amount to render it injurious to beneficial plant, human, animal or aquatic life when applied in accordance with directions for use on the label, or if adequate warning statements and directions for use, which may be necessary to protect plant, human, animal or aquatic life are not shown upon the label;

(b) if its composition falls below or differs from that which it is purported to possess by its labeling; or

(c) if it contains unwanted crop or weed seed, or primary noxious or secondary noxious weed seed.

HISTORY: Laws, 1978, ch. 322, § 11, eff from and after July 1, 1978.

§ 69-24-23. "Stop sale, use or removal" orders.

The commissioner may issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lot of soil or plant amendment and to hold at a designated place, when the commissioner finds said soil or plant amendment is offered or exposed for sale in violation of any of the provisions of this chapter, until the law has been complied with and said soil or plant amendment is released in writing by the commissioner, or said violation has been otherwise legally disposed of by written authority. The commissioner shall release the soil or plant amendment so withdrawn when the requirements of the provisions of the chapter have been complied with and all costs and expenses incurred in connection with the withdrawal from sale have been paid.

HISTORY: Laws, 1978, ch. 322, § 12, eff from and after July 1, 1978.

§ 69-24-25. Violations; notice; hearings; penalties; warnings; injunctive relief.

(1) If it shall appear from the examination of any soil or plant amendment that any of the provisions of this chapter or the rules and regulations issued thereunder have been violated, the commissioner shall cause notice of the violations to be given to the registrant, distributor, or possessor from whom said sample was taken. Any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the commissioner and State Chemist. If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of this chapter or rules and regulations issued thereunder have been violated, the commissioner and State Chemist may certify the facts to the proper prosecuting attorney.

(2) Any person convicted of violating any provision of this chapter or the rules and regulations issued thereunder shall be guilty of a misdemeanor and punished as provided for in Section 99-19-31. Appeals from convictions under this subsection shall be as in other cases at law.

(3) Nothing in this chapter shall be construed as requiring the commissioner, State Chemist or their representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the chapter when they believe that the public interests will be best served by a suitable notice of warning in writing.

(4) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(5) The commissioner is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under the chapter notwithstanding the existence of other remedies at law. Said injunction shall be issued without bond.

HISTORY: Laws, 1978, ch. 322, § 13, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 49, 50.

CJS.
3 C.J.S., Agriculture §§ 94 et seq.

§ 69-24-27. Adoption and enforcement of rules and regulations.

The commissioner and State Chemist may adopt, amend or repeal rules and regulations relating to sampling, analytical methods, forms, minimum percentage, soil or plant amending ingredients, exempted materials, investigational allowances, definitions, records, labels, labeling, liability bond, misbranding, mislabeling and the distribution of soil or plant amendments as may be necessary to carry into effect the full intent and meaning of this chapter.

HISTORY: Laws, 1978, ch. 322, § 14; Laws, 2004, ch. 518, § 2, eff from and after July 1, 2005.

CHAPTER 25.

PLANTS, PLANT AND BEE DISEASES

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Article 4.	Mississippi Hemp Cultivation Act.	69-25-201

ARTICLE 1.

DIVISION OF PLANT INDUSTRY; PLANT DISEASES AND PESTS.

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§ 69-25-1. Definitions.

For the purpose of this article, the following terms shall be construed, respectively, to mean:

Division of Plant Industry – means the Bureau of Plant Industry within the Regulatory Office of the Mississippi Department of Agriculture and Commerce.

Insect pests – means insects or other invertebrates injurious to plants and plant products.

Noxious weed – means a plant species or classified group of plants declared by the Bureau of Plant Industry to be a public nuisance or to be especially injurious to the environment, to agricultural and horticultural production or to wildlife and which should be controlled and the dissemination of which prevented.

Plant diseases – means fungi, bacteria, nematodes and viruses injurious to plants and plant products and the pathological condition in plants and plant products caused by fungi, bacteria, nematodes and viruses. This definition shall also include plants which are parasitic or partially parasitic on other plants such as "witch weed", Striga asiatica, a serious parasitic plant of corn and other members of the grass family.

Plants and plant products – Trees, shrubs, seedlings, vines, forage and cereal plants, and all other plants; cuttings, grafts, scions, buds and all other parts of plants and fruits, vegetables, roots, bulbs, seeds, wood, timber and all other plant products.

Places – Vessels, cars and other vehicles, buildings, docks, nurseries, orchards and other premises, where plants and plant products are grown, kept or handled.

Persons – Individuals, associations, partnerships and corporations.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382b; 1930, § 6958; 1942, § 4979; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 2; Laws, 1991, ch. 530, § 19; Laws, 2003, ch. 401, § 1, eff from and after July 1, 2003.

Cross References — Definitions relating to agricultural seeds, see § 69-3-1.

§ 69-25-3. Bureau of plant industry; advisory board.

The State Plant Board is abolished and its duties are transferred to the Commissioner of Agriculture and Commerce, and it shall henceforth be known as the Bureau of Plant Industry.

There is created an Advisory Board to the Bureau of Plant Industry, composed of the following: the State Chemist; the head of the Entomology and Plant Pathology Department, Mississippi State University of Agriculture and Applied Science; the head of the Plant and Soil Science Department, Mississippi State University of Agriculture and Applied Science; Alcorn State University Director of Agriculture and Applied Sciences; and, for a period of two (2) years, the following: one (1) soil conservation district commissioner appointed by the commissioner; two (2) residents of Mississippi who engage in the production of any crop, appointed by the commissioner; one (1) resident of the State of Mississippi who is a commercial applicator holding a license issued under the rules and regulations of the Bureau of Plant Industry, appointed by the commissioner; one (1) resident of the State of Mississippi who is a restricted use pesticide registrant or an employee of such person, appointed by the commissioner; one (1) resident of the State of Mississippi who is either a wholesale or retail horticulturist, appointed by the commissioner, and one (1) resident of the State of Mississippi who is a licensed landscape contractor, appointed by the commissioner, who shall serve with no compensation and whose duties are to advise the commissioner on all matters regarding the Bureau of Plant Industry. The commissioner shall meet annually with the advisory board and the Director of the Bureau of Plant Industry. It is the intent and purpose of this section to maintain the domicile of this division of the Department of Agriculture and Commerce at Mississippi State University of Agriculture and Applied Science, Mississippi State, Mississippi.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382c; 1930, § 6957; 1942, § 4978; Laws, 1920, ch. 252; Laws, 1968, ch. 247, § 1; Laws, 1971, ch. 446, § 1 1979, ch. 338, § 2; Laws, 1991, ch. 519, § 1; Laws, 1995, ch. 577, § 1; Laws, 2000, ch. 372, § 1; Laws, 2003, ch. 401, § 2, eff from and after July 1, 2003.

Cross References — Authority of commissioner to make and enforce regulations, see §§ 69-19-1, 69-23-9, 69-25-7.

No rule or regulation adopted under the terms of Article 3 of Chapter 21 to be effective unless first approved by the Advisory Board of the Bureau of Plan Industry, see § 69-21-109.

Use of pesticide registration fees by Division of Plant Industry and Department of Environmental Quality to carry out program of protecting underground water resources from pesticides, and advisory board's approval of cancellation or suspension of pesticide registration, see § 69-23-7.

Cancellation or suspension of pesticide registration on ground of imminent hazard, by Commissioner of Environmental Quality, with approval of advisory board provided for in this section, see § 69-23-7.

Duty of advisory board to approve regulations to carry out the Pesticide Application Law, see § 69-23-109.

Use of fertilizer registration fees by Division of Plant Industry and Department of Environmental Quality to carry out program of protecting underground water resources from fertilizers, see § 75-47-7.

RESEARCH REFERENCES

ALR.

Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

§ 69-25-5. Director of the Bureau of Plant Industry; State Entomologist.

The Commissioner of Agriculture and Commerce shall appoint a full-time executive secretary and director, hereinafter called the "Director of the Bureau of Plant Industry," whose office shall be at Mississippi State University of Agriculture and Applied Science. The director shall serve at the will and pleasure of the commissioner and shall receive a salary in an amount to be determined by the commissioner. It shall be the duty of the director to enforce the rules and regulations adopted by the commissioner and to perform such other functions that may be assigned to him by the commissioner.

The Commissioner of Agriculture and Commerce and the Director of the Bureau of Plant Industry shall appoint a full-time State Entomologist, who shall be a qualified entomologist and whose office shall be at Mississippi State University of Agriculture and Applied Science.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382c; 1930, § 6957; 1942, §§ 4978, 4978.5; Laws, 1920, ch. 252; Laws, 1968, ch. 247, § 1; Laws, 1971, ch. 446, §§ 1, 24; Laws, 1972, ch. 369, § 1; Laws, 2000, ch. 372, § 2; Laws, 2003, ch. 401, § 3, eff from and after July 1, 2003.

RESEARCH REFERENCES

ALR.

Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

§ 69-25-7. Powers and duties of commissioner.

(1) The Commissioner of Agriculture and Commerce may conduct inspections and promulgate and enforce quarantine regulations as may be necessary in carrying out the provisions of this article.

(2)(a) The Commissioner of Agriculture and Commerce shall, from time to time, make rules and regulations for carrying out the provisions and requirements of this article, including rules and regulations under which his inspectors and other employees shall:

(i) Inspect places, plants and plant products, and things, and substances used or connected therewith;

(ii) Investigate, control, eradicate and prevent the dissemination of insect pests, diseases and noxious weeds; and

(iii) Supervise or cause the treatment, cutting and destruction of plants and plant products and other things infested or infected therewith.

(b) No rule or regulation shall be effective unless first submitted to and approved by the advisory board established under the provisions of Section 69-25-3.

(c) The inspectors and employees employed by the commissioner may carry out and execute the regulations and orders of the commissioner and under direction of the commissioner carry out the provisions of this article.

(3) To carry out the provisions of this article, the commissioner or his representative may enter into compacts and memorandums of agreement and/or understanding with governmental agencies or private organizations. The Bureau of Plant Industry may establish statewide or regional cooperative weed management areas for any or all of the weeds listed as noxious under officially promulgated regulations. Under such authority, the Bureau of Plant Industry may serve as lead agency in establishing control and/or eradication programs for regulated pests and noxious weeds and actively seek grants and external resources to provide matching resources for other avenues of funding.

HISTORY: Codes, Hemingway's 1921 Supp. §§ 6382d, 6382h; 1930, §§ 6959, 6963; 1942, §§ 4980, 4984; Laws, 1920, ch. 252; Laws, 1971, ch. 446, §§ 3, 7; Laws, 2003, ch. 401, § 4; Laws, 2008, ch. 358, § 1, eff from and after passage (approved Mar. 26, 2008).

Cross References — Services available from Mississippi State Chemical Laboratory, see §§ 57-21-1 et seq.

RESEARCH REFERENCES

Am. Jur.	CJS.
3 Am. Jur. 2d, Agriculture §§ 32 et seq.	3 C.J.S., Agriculture §§ 47 et seq.

§ 69-25-9. Duties of commissioner and persons having knowledge of infected plants.

The Commissioner of Agriculture and Commerce shall keep himself informed as to known varieties of insect pests, diseases and noxious weeds, their origin, locality, nature and appearance thereof, the manner in which they are disseminated, and approved methods of treatment and eradication.

The Commissioner of Agriculture and Commerce, in his rules and regulations made pursuant to this article, shall list the insect pests, diseases and noxious weeds, of which he shall find that the introduction into, or the dissemination within, this state should be prevented in order to safeguard the environment, agricultural and horticultural production and the plants and plant products of this state, together with the plants and plant products and other things likely to become infested or infected with such insect pests, diseases and noxious weeds. Every such insect pest, disease and noxious weed listed, and every plant and plant product and other thing infected therewith, is hereby declared to be a public nuisance. Every person who has knowledge of the presence of any insect pest, disease or noxious weed listed, as required by this section, in the rules and regulations made pursuant to this article, in or upon any place, shall immediately report same to the commissioner or an inspector therefor giving such detailed information relative thereto as he may have. Every person who deals in or engages in the sale of plants and plant products or other things infested or infected, or likely to be or become so shall furnish to the commissioner or his inspectors, when requested, a statement of the names and addresses of the persons from whom and the localities where he purchased or obtained such plants and plant products, and other things infested or infected, or likely to be or become so.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382g; 1930, § 6962; 1942, § 4983; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 6; Laws, 2003, ch. 401, § 5, eff from and after July 1, 2003.

§ 69-25-10. Repealed.

Repealed by its own terms effective July 1, 2016.

§ 69-25-10. [Laws, 2012, ch. 502, § 4; Laws, 2015, ch. 306, § 1, eff from and after July 1, 2015.]

Editor's Notes — Former § 69-25-10 prohibited the cultivation of certain nonnative plant species for the purpose of fuel production without a special permit.

§ 69-25-11. Inspections and quarantine; enforcement of.

The inspections and the quarantine enforcement referred to in this article shall be conducted under the direction of the Commissioner of Agriculture and

Commerce by the Director of the Bureau of Plant Industry and the State Entomologist at Mississippi State University of Agriculture and Applied Science and such assistants as may become necessary. It shall be the duty of the Director of the Bureau of Plant Industry and the State Entomologist to make recommendations to the commissioner regarding quarantines and regulations.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382e; 1930, § 6960; 1942, § 4981; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 4; Laws, 2003, ch. 401, § 6, eff from and after July 1, 2003.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 28, 29, 32, 39 et seq.

CJS.
3 C.J.S., Agriculture § 52.

§ 69-25-13. Inspectors may be employed.

For the purpose of carrying out the provisions of this article, the Commissioner of Agriculture and Commerce may employ, prescribe the duties of, and fix the compensation of, such inspectors and other employees as he may require and incur such expenses as may be necessary, within the limits of appropriations made by law. He shall cooperate with other departments, boards and officers of this state and of the United States as far as practicable.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382f; 1930, § 6961; 1942, § 4982; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 5, eff from and after July 1, 1971.

§ 69-25-15. How infected or defective plants and products dealt with.

Whenever an inspection made pursuant to this article discloses that any places, or plants, or plant products or things or substances used or connected therewith, are infested or infected with any insect, pest, disease or noxious weed listed as a public nuisance, or are dead or of stock so seriously weakened by drying, excessive heat or cold, or any other condition that makes it unable to grow satisfactorily when given reasonable care, as required above herein, in the rules and regulations made pursuant hereto, written notice thereof shall be given the owner or other person in possession or control of the place where found and such owner or other person shall proceed to control, eradicate or prevent the dissemination of such insect, pest, disease or noxious weed, and to remove, cut or destroy infested and infected plants and plant products, or dead or dying plants, or things or substances used or connected therewith, within the time and in the manner prescribed by said notice or the said rules and regulations. Whenever such owner or other person cannot be found, or shall fail, neglect or refuse to obey the requirements of said notice and the rules and regulations so made, such requirements shall be carried out by inspectors or other employees of the Commissioner of Agriculture and Commerce as the law allows.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382i; 1930, § 6964; 1942, § 4985; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 8; Laws, 1974, ch. 380; Laws, 2003, ch. 401, § 7, eff from and after July 1, 2003.

RESEARCH REFERENCES

Am. Jur.

3 Am. Jur. 2d, Agriculture §§ 39 et seq.

8 Am. Jur. Pl & Pr Forms (Rev), Crops, Forms 1 et seq. (abatement of agricultural nuisances).

CJS.

3 C.J.S., Agriculture §§ 52 et seq.

§ 69-25-17. How proscribed plants and products may be shipped.

It shall be unlawful for any person to bring or cause to be brought into this state any plant or plant product or other thing listed as required above herein, in the rules and regulations made pursuant hereto, unless thereby plainly and legibly marked thereon or affixed thereto, or on or to the car or other vehicle carrying, or the bundle, package or other container of the same, in a conspicuous place, a statement or a tag or other device showing the names and addresses of the consignors or shippers and the consignee or person to whom shipped, the general nature and quantity of the contents, and the name of the locality where grown or shipped, together with a certificate of inspection of the proper official of the state, territory, district or county from which it was brought or shipped, showing that such plant or plant product or other thing or substance was found or believed to be free from insect pests, diseases and noxious weeds, and any other information required by the Commissioner of Agriculture and Commerce such as certificates of fumigation.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382j; 1930, § 6965; 1942, § 4986; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 9; Laws, 2003, ch. 401, § 8, eff from and after July 1, 2003.

§ 69-25-19. Unlawful to ship and deal in proscribed plants before inspection.

It shall be unlawful for any person to sell, give away, carry, ship, or deliver for carriage or shipment within this state, any plants or plant products or other thing or substitute listed, as required in such rules and regulations made by the Commissioner of Agriculture and Commerce unless such plant or plant products or other thing or substance have been officially inspected and a certificate issued by an inspector of the commissioner stating that the plants or plant products or other thing or substance have been inspected and found to be apparently free from insect pests, diseases and noxious weeds, and any other facts provided for in the rules and regulations made pursuant to this statute.

For the issuance of such certificate, the commissioner may require the payment of a reasonable fee to cover the expense of such an inspection and certification provided, however, that if such plants or plant products or other thing or substance were brought into the state in compliance with the requirements of law such certificate required may be accepted in lieu of the inspection and certificate required by this section in such cases as shall be provided for in the rules and regulations made hereunder. If it shall be found at any time that a certificate of inspection issued or accepted pursuant to the provisions of this section is being used in connection with plants and plant products or other things or substances which are infested or infected with insect pests, diseases or noxious weeds listed in the rules and regulations, its further use may be prohibited, subject to such inspection and other dispositions of the plants and plant product involved as may be provided for by the commissioner. All monies collected by the commissioner where not otherwise provided shall be deposited in the State Treasury to the credit of the General Fund revenue receipts.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382k; 1930, § 6966; 1942, § 4987; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 10; Laws, 2003, ch. 401, § 9, eff from and after July 1, 2003.

§ 69-25-21. Suspected plants or products; information to be furnished commissioner.

Any person in this state who receives from without the state any plant or plant product, or other thing or substance as to which the requirements of section next before the last above have not been complied with, or who receives any plant or plant product, or other thing or substance, sold, given away, carried, shipped, or delivered for carriage or shipment within this state as to which the requirements of next foregoing section have not been complied with, shall immediately inform the Commissioner of Agriculture and Commerce or an inspector thereof and isolate and hold the plant or plant product or other thing or substance unopened or unused subject to such inspection and other disposition as may be provided for by the commissioner.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382l; 1930, § 6967; 1942, § 4988; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 11; Laws, 2003, ch. 401, § 10, eff from and after July 1, 2003.

§ 69-25-23. Infected localities outside of state; shipments from prohibited.

Whenever the Commissioner of Agriculture and Commerce finds that there exists outside of this state any destructive or nuisance insect pest, disease or noxious weed, the commissioner may give public notice thereof, specifying the locations, the plants and the plant products infested, infected or declared noxious and which are likely to become infested or infected therewith. In order to safeguard the environment, agricultural and horticultural production, plants and plant products, the movement of such plants or plant products or other things or substances into this state from the infected or infested locality shall thereafter be prohibited until the commissioner determines that the danger of the introduction into this state of such insect pests, diseases or noxious weeds from such locality has ceased to exist.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382m; 1930, § 6968; 1942, § 4989; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 12; Laws, 2003, ch. 401, § 11, eff from and after July 1, 2003.

§ 69-25-25. Infected localities within this state; how dealt with.

Whenever the Commissioner of Agriculture and Commerce shall find that there exists in this state, or any part thereof, any insect pest, disease or noxious weed, and that its dissemination should be controlled or prevented, the commissioner shall give public notice thereof, specifying the plants or plant products or other thing or substance infested, infected or declared noxious or likely to become infested or infected therewith, and the movement, planting or other use of any such plant or plant product, or other thing or substance specified in such notice as likely to carry and disseminate such insect pest, disease or noxious weed, except under such conditions as shall be prescribed by the commissioner as to inspection, treatment and disposition, shall be prohibited within such area as may be designated in the public notice until the commissioner shall find that the danger of the dissemination of such insect pest, disease or noxious weed has ceased to exist, of which the commissioner shall give public notice.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382n; 1930, § 6969; 1942, § 4990; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 13; Laws, 2003, ch. 401, § 12, eff from and after July 1, 2003.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 38 et seq.

CJS.
3 C.J.S., Agriculture §§ 47 et seq.

§ 69-25-27. Shipment through the state may be prohibited.

By virtue of the powers conferred herein and for the purpose of protecting the environment, agricultural and horticultural production, the plant life and plant products of this state, the Commissioner of Agriculture and Commerce may prevent and prohibit the introduction into the state for the purpose of transportation through the state of any such plants and plant products or other things or substance hereinbefore mentioned to the same extent and for the same purpose and with the same authority that is provided above with reference to the introduction of the same into the state.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382u; 1930, § 6976; 1942, § 4997; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 20; Laws, 2003, ch. 401, § 13, eff from and after July 1, 2003.

§ 69-25-29. How shipments through the state may be made.

The Commissioner of Agriculture and Commerce for the same purposes and in the same manner and with the same authority, as provided in Section 69-25-27, may prohibit and prevent the introduction into or the transportation through the state of any such plants and plant products or other thing or substance except when contained in such container, car, boat, or vehicle and shall prevent the escape or waste of any part of the same while being introduced into or transported through the state, and may likewise prohibit and prevent the opening of such container, car, boat, or vehicle containing such plant or plant product or other thing or substance within the state.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382v; 1930, § 6977; 1942, § 4998; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 21, eff from and after July 1, 1971.

§ 69-25-31. Reciprocal agreements.

The Commissioner of Agriculture and Commerce shall have power to make reciprocal agreements with the responsible officials of other states under which nursery stock or plants from any other state may be sold or delivered in Mississippi under the same conditions required for the sale or delivery of Mississippi nursery stock or plants in the state concerned.

HISTORY: Codes, 1942, § 4999; Laws, 1936, ch. 203; Laws, 1971, ch. 446, § 22, eff from and after July 1, 1971.

§ 69-25-33. Boards of supervisors and municipal governing bodies may appropriate money to cooperate with the commissioner.

The boards of supervisors in the various counties of the state and the governing bodies in the various municipalities of the state are hereby authorized and empowered, in their discretion, to appropriate money out of the general funds of the counties and municipalities to be used for the purpose of cooperating with the Commissioner of the Department of Agriculture and Commerce in eradicating serious insect pests, rodents, plant parasites, plant diseases and noxious weeds and in protecting the counties and municipalities from serious insect pests, rodents, plant parasites, plant diseases and noxious weeds.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382x; 1930, § 6978; 1942, § 5000; Laws, 1920, ch. 219; Laws, 1958, ch. 149; Laws, 1971, ch. 446, § 23; Laws, 1972, ch. 369, § 2; Laws, 2003, ch. 401, § 14, eff from and after July 1, 2003.

Cross References — Promotion of agriculture by county extension department and board of supervisors, see § 19-5-63.

Eradication of fire ants by county, see § 19-9-99.

§ 69-25-35. Suspected premises and article may be examined.

For the purpose of carrying out the provisions and requirements of this article, and of the rules and regulations made, and notices given, pursuant thereto, the Commissioner of Agriculture and Commerce and his inspectors and employees shall have power to enter in or upon any place, and to open any bundle, package or other container containing or thought to contain plants or plant products.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382o; 1930, § 6970; 1942, § 4991; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 14, eff from and after July 1, 1971.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 28, 29, 32, 38 et seq.

CJS.
3 C.J.S., Agriculture §§ 48 et seq.

§ 69-25-37. Remedy of person affected.

Any person affected by any rule or regulations made, or notice given, pursuant to this article, may have a review thereof by the Commissioner of Agriculture and Commerce for the purpose of having such rule, regulation or notice modified, suspended or withdrawn. Such review shall be allowed and considered and the cost thereof fixed, assessed, collected and paid in such manner and in accordance with such rules and regulations as may be prescribed by the commissioner.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382p; 1930, § 6971; 1942, § 4992; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 15, eff from and after July 1, 1971.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture § 43.

CJS.
3 C.J.S., Agriculture § 53.

§ 69-25-39. Act of agent or officer deemed the act of principal or company.

In construing and enforcing the provisions of this article, omission or failure of any official, agent or other person acting for or employed by any association, partnership, or corporation within the scope of his employment of office shall, in every case, also be deemed the act, omission or failure of such association, partnership or corporation as well as that of the person.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382r; 1930, § 6973; 1942, § 4994; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 17, eff from and after July 1, 1971.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture § 46.

CJS.
3 C.J.S., Agriculture §§ 53 et seq.

§ 69-25-41. Commissioner or any of his employees may sue out injunctions.

The Commissioner of Agriculture and Commerce or any of his inspectors or employees shall be a proper party in any court of equity to effectively carry out any of the provisions of this article when an injunction would be a proper remedy.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382s; 1930, § 6974; 1942, § 4995; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 18, eff from and after July 1, 1971.

§ 69-25-43. This article not to conflict with any act of Congress.

The provisions of this article shall not be so construed or enforced as to conflict in any way with any act of Congress regulating the movement of plants or plant products in interstate or foreign commerce.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382t; 1930, § 6975; 1942, § 4996; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 19, eff from and after July 1, 1971.

§ 69-25-45. Enforcement of rules and regulations.

The Commissioner of Agriculture and Commerce shall have power and authority to enforce his rules, ordinances and regulations in any court of competent jurisdiction by civil, as well as criminal proceedings, and if the remedy to be pursued be by writ of injunction, no court of this state shall have right previous to a trial upon the merits to set aside such writ on bond. It shall be the duty of the attorney general, district attorneys and county attorneys to represent said commissioner whenever called upon to do so. Said commissioner in the discharge of his duties and the enforcement of the powers herein delegated, may send for books and papers, administer oaths, hear witness, etc., and to that end it is made the duty of the various sheriffs throughout the state to serve all summons and other papers upon the request of said commissioner.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382q; 1930, § 6972; 1942, § 4993; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 16, eff from and after July 1, 1971.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 28, 29, 32, 38 et seq.

CJS.
3 C.J.S., Agriculture §§ 47 et seq.

§ 69-25-47. Penalty for violations.

(1) Any person who shall violate any provisions or requirements of this article, or of the rules and regulations made or of any notice given pursuant thereto or shall forge, counterfeit, deface, destroy or wrongfully use any certificate provided for herein or in the rules and regulations made pursuant thereto, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment for not more than six (6) months or by both such fine and imprisonment at the discretion of the court having jurisdiction.

(2) In addition to the criminal penalty imposed under subsection (1) of this section, each violation of this article or the applicable rules and regulations established by the commissioner pertaining hereto shall subject the violator to administrative action as provided in Sections 69-25-51 through 69-25-63.

HISTORY: Codes, Hemingway's 1921 Supp. § 6382q; 1930, § 6972; 1942, § 4993; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 16 eff from and after July 1, 1971; Laws, 2003, ch. 401, § 15; Laws, 2012, ch. 502, § 1, eff from and after July 1, 2012.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ARTICLE 2.

ADMINISTRATIVE HEARING PROCEDURE FOR BUREAU OF PLANT INDUSTRY.

Sec.

69-25-51. Alleged violation of rules and regulations of Bureau of Plant Industry; right to hearing; Director of the Bureau of Plant Industry as reviewing officer; determination; penalty.
69-25-53. Hearing procedure; decision of hearing committee.
69-25-55. Repealed.
69-25-57. Jurisdiction of Commissioner of Agriculture and Commerce.
69-25-59. Judicial review.
69-25-61. Emergency procedure when herbicide or insecticide violation presents clear and present danger to public health, safety or welfare; Department of Agriculture and Commerce authorized to issue emergency orders prior to hearing.
69-25-63. Payment and enforcement of penalties; fees and costs.
69-25-65. Repealed.

§ 69-25-51. Alleged violation of rules and regulations of Bureau of Plant Industry; right to hearing; Director of the Bureau of Plant Industry as reviewing officer; determination; penalty.

(1) When any administrative allegation or charge is made against a person for violating the rules and regulations of the Bureau of Plant Industry of the Mississippi Department of Agriculture and Commerce or the laws under Sections 69-3-1 through 69-3-29, Sections 69-19-1 through 69-19-15, Sections 69-21-101 through 69-21-128, Sections 69-23-1 through 69-23-135, Sections 69-25-1 through 69-25-47, Sections 69-25-101 through 69-25-109, or Sections 69-25-201 through 69-25-221, the Director of the Bureau of Plant Industry, or his designee, shall act as the reviewing officer. The complaint must be in writing, signed by the person making the charge, and filed in the Office of the Bureau of Plant Industry. The department shall send a copy of the complaint and any supporting documents to the person accused along with a summons requiring the accused to respond to the allegations within thirty (30) days. The notification shall be accomplished by any of the methods provided for in Rule 4 of the Mississippi Rules of Civil Procedure or by certified mail. If the accused does not respond within the thirty-day period, he shall be considered to be in default. Upon receipt of the response and any supporting documents from the accused, the reviewing officer shall determine the merits of the complaint. The reviewing officer may meet informally with the accused and discuss the alleged violation with him.

(2) If the reviewing officer determines that the complaint lacks merit, he may dismiss the complaint.

(3) If the reviewing officer determines that there is substantial evidence that a violation has occurred or if the accused admits to the truth of the allegations upon which the complaint is based, the reviewing officer may impose an appropriate penalty on the accused, which may be any or all of the following:

(a) Issue a warning letter.

(b) Suspend, modify, deny, cancel or revoke any license or permit granted by the department to the accused.

(c) Issue a stop sale order with regard to any pesticide, plant or other material regulated by the department that is mislabeled or otherwise not in compliance with applicable law or regulations.

(d) Require the accused to relabel any pesticide, plant or other material regulated by the department that is mislabeled.

(e) Seize any pesticide, plant or other material regulated by the department and sell, destroy or otherwise dispose of the material and apply the proceeds of the sale to the state's expenses and any fees or penalties levied under this article.

(f) Refuse to register, cancel or suspend the registration of a pesticide, plant or other material that is not in compliance with any applicable law or regulation.

(g) Levy a civil penalty in an amount not to exceed Five Thousand Dollars ($5,000.00) for each violation.

In determining the amount of the penalty, the reviewing officer shall consider the appropriateness of the penalty for the particular violation, the effect of the penalty on the person's ability to continue in business and the gravity of the violation.

(4) If the accused requests a hearing with the department, in writing, within thirty (30) days from receipt of the decision of the reviewing officer, the commissioner shall appoint three (3) members of the advisory board to the Bureau of Plant Industry to act as a hearing committee and a hearing shall be scheduled. If the accused fails to request a hearing within the thirty-day period, the decision of the reviewing officer is final.

HISTORY: Laws, 1992, ch. 474, § 1; Laws, 2005, ch. 533, § 1; Laws, 2008, ch. 353, § 1; Laws, 2009, ch. 515, § 17; Laws, 2012, ch. 502, § 2; Laws, 2013, ch. 407, § 4, eff from and after July 1, 2013; Laws, 2020, ch. 413, § 12, eff from and after passage (approved June 29, 2020).

Joint Legislative Committee Notes — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in the first sentence of (1) by substituting "69-25-47, Sections 69-25-101 through 69-25-109, or Sections 69-25-201 through 69-25-221" for "69-25-47 or Sections 69-25-101 through 69-25-109, Mississippi Code of 1972, or Sections 69-25-201 through 69-25-221." The Joint Committee ratified the corrections at its October 19, 2020, meeting.

Editor's Notes — Section 69-19-11 referred to in (1) was repealed by Laws of 1997, ch. 449, § 5, eff from and after passage (approved March 25, 1997). For current provisions, see § 69-19-15.

Amendment Notes — The 2020 amendment, effective June 29, 2020, inserted "or Sections 69-25-201 through 69-25-221" in (1).

Cross References — Mississippi Administrative Procedures Law, see generally §§ 25-43-1 et seq.

Bureau of Plant Industry, see generally §§ 69-25-1 et seq.

Civil penalty for violation of statute set forth in this section, see § 69-25-61.

Procedure for notification and summons under the Mississippi Rules of Civil Procedure, see Miss. R. Civ. P. 4.

RESEARCH REFERENCES

Am. Jur.

2 Am. Jur. 2d, Administrative Law §§ 287 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Forms 74, 75 (notice of complaint and of alleged violation).

CJS.

73 C.J.S., Public Administrative Law and Procedure § 146.

§ 69-25-53. Hearing procedure; decision of hearing committee.

(1) Within a reasonable time after the accused's request for a hearing, the hearing committee shall conduct an evidentiary hearing. For good cause shown, the hearing committee may grant a continuance of the hearing. Written

notice of the date, time and place of such hearing shall be delivered to the accused not less than fifteen (15) days prior to the hearing.

(2) A court reporter shall be in attendance and shall record the proceedings. The hearing committee shall have the right and duty to impose reasonable restrictions as it may deem necessary or appropriate to insure an orderly, expeditious and impartial proceeding. The parties may offer oral testimony through witnesses and shall have the right of cross-examination. The rules of evidence shall be relaxed.

(3) At the hearing, the hearing committee may administer oaths and receive evidence, either oral or documentary. Upon the request of either party, the Department of Agriculture and Commerce may issue subpoenas to compel the attendance of witnesses or the production of books, papers, records or other documentary evidence. If a person fails to comply with a subpoena issued by the department, either party may invoke the aid of any court of general jurisdiction of this state. The court may order such person to comply with the requirements of the subpoena. Failure to comply with the order of the court may be treated as contempt.

(4) At the conclusion of the hearing, the hearing committee shall render a written decision incorporating the findings of facts, conclusions of law and penalty, if any. The hearing committee may impose any penalty authorized under Section 69-25-51. A copy of the decision of the hearing committee shall be delivered to the accused by certified mail.

HISTORY: Laws, 1992, ch. 474, § 2; Laws, 2005, ch. 533, § 2, eff from and after July 1, 2005.

RESEARCH REFERENCES

Am. Jur.

1A Am. Jur. Pl & Pr (Rev), Administrative Law, Forms 111-112 (demand for hearing)

113-115 (notice of hearing).

2 Am. Jur. 2d, Administrative Law §§ 298, 301 et seq.

1A Am. Jur. Pl & Pr (Rev), Administrative Law, Forms 111-112 (demand for hearing); 113-115 (notice of hearing).

CJS.

73A C.J.S., Public Administrative Law and Procedure §§ 251 et seq.

§ 69-25-55. Repealed.

Repealed by Laws of 2005, ch. 533, § 36 effective from and after July 1, 2005.

§ 69-25-55. [Laws, 1992, ch. 474, § 3, eff from and after July 1, 1992.]

Editor's Notes — Former § 69-25-55 provided that the failure to request a timely hearing constituted a waiver of the right to a hearing.

§ 69-25-57. Jurisdiction of Commissioner of Agriculture and Commerce.

The Commissioner of Agriculture and Commerce shall have jurisdiction over all persons and property necessary to administer and enforce the provisions of this article and he may adopt rules and regulations to implement the provisions of this article.

HISTORY: Laws, 1992, ch. 474, § 4; Laws, 2005, ch. 533, § 3, eff from and after July 1, 2005.

§ 69-25-59. Judicial review.

(1) Any individual aggrieved by a final decision of the hearing committee shall be entitled to judicial review.

(2) An appeal from the decision of the hearing committee shall be made by filing a written notice of appeal with the circuit court clerk of the county where the accused resides, or in the case of a nonresident accused, in the Circuit Court of the First Judicial District of Hinds County. The notice of appeal and the payment of costs must be filed and paid with the circuit clerk, within thirty (30) days of the entry of the order being appealed. The appeal shall otherwise be conducted in accordance with existing laws and rules.

(3) Any party aggrieved by the action of the circuit court may appeal to the Mississippi Supreme Court in the manner provided by law and rules.

HISTORY: Laws, 1992, ch. 474, § 5; Laws, 2005, ch. 533, § 4, eff from and after July 1, 2005.

RESEARCH REFERENCES

Am. Jur.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Forms 201 et seq.

CJS.

73A C.J.S., Public Administrative Law and Procedure §§ 313 et seq.

§ 69-25-61. Emergency procedure when herbicide or insecticide violation presents clear and present danger to public health, safety or welfare; Department of Agriculture and Commerce authorized to issue emergency orders prior to hearing.

(1) When a violation occurs, or is about to occur, that presents and clear and present danger to the public health, safety or welfare and requires immediate action, the commissioner, department field inspectors, or any person authorized by the commissioner, may issue an order to be effective immediately, prior to notice and a hearing, that imposes any or all of the following penalties against the accused:

(a) A stop sale order for any pesticide, plant or other material regulated by the department that is mislabeled or otherwise not in compliance with applicable law or regulations.

(b) Require the accused to relabel any pesticide, plant or other material regulated by the department that is mislabeled.

(c) Seize any pesticide, plant or other material regulated by the department and sell, destroy or otherwise dispose of such material and apply the proceeds of such sale to the state's expenses and any fees or penalties levied.

(d) Refuse to register, or cancel or suspend the registration of a pesticide, plant or other material that is not in compliance with any applicable law or regulation.

The order shall be served upon the accused in the same manner that the summons and complaint may be served upon him, except that, in the alternative, it may be served by giving a copy of the order to the attendant or clerk at the accused's establishment. The accused shall then have thirty (30) days after service of the order to request an informal administrative review before the Director of the Bureau of Plant Industry, or his designee, who shall act as reviewing officer. If the accused requests a review within thirty (30) days, the reviewing officer shall conduct an informal administrative review within ten (10) days after the request is made. If the accused does not request an informal administrative review within thirty (30) days, then he is deemed to have waived his right to a review. At the informal administrative review, subpoena power shall not be available, witnesses shall not be sworn nor be subject to cross-examination and there shall be no court reporter or record made of the proceedings. Each party may present its case in the form of documents or oral statements. The rules of evidence shall not apply. The reviewing officer's decision shall be in writing, and it shall be delivered to the parties by certified mail.

If either party is aggrieved by the order of the reviewing officer, he may request a full evidentiary hearing before the hearing committee in accordance with the procedures in Sections 69-25-51 and 69-25-53. The request for an evidentiary hearing must be made with the department within thirty (30) days of receipt of the decision of the reviewing officer. Failure to request an evidentiary hearing within the thirty (30) days is deemed a waiver of such right. If either party is aggrieved by the decision of the hearing committee, he shall have the right of judicial review in circuit court and in the Supreme Court as provided in Section 69-25-59.

HISTORY: Laws, 1992, ch. 474, § 6; Laws, 2005, ch. 533, § 5, eff from and after July 1, 2005.

§ 69-25-63. Payment and enforcement of penalties; fees and costs.

When any penalty assessed by the hearing officer or committee is not paid, the department may file suit in a court of competent jurisdiction for the purpose of reducing the order of the hearing officer or committee to judgment, and if successful on the merits, the department shall be entitled to an award for reasonable attorney's fees and court costs.

HISTORY: Laws, 1992, ch. 474, § 7; Laws, 2005, ch. 533, § 6, eff from and after July 1, 2005.

RESEARCH REFERENCES

CJS.
73A C.J.S., Public Administrative Law and Procedure §§ 481 et seq.

§ 69-25-65. Repealed.

Repealed by Laws of 2005, ch. 533, § 37 effective from and after July 1, 2005.

§ 69-25-65. [Laws, 1992, ch. 474, § 8, eff from and after July 1, 1992.]

Editor's Notes — Former § 69-25-65 provided that the administrative hearing procedure did not apply to aerial applicators of pesticides.

ARTICLE 3.

BEE DISEASES.

Sec.
69-25-101. Shipment of bees into State; requirement of certificate or permit.
69-25-103. Department of Agriculture and Commerce empowered to deal with Africanized bees and bee diseases.
69-25-105. Authority to make inspections and to order removal, destruction or treatment of Africanized or infected bees.
69-25-107. Shipment of suspected materials may be prohibited.
69-25-109. Penalty for violations of this article.

§ 69-25-101. Shipment of bees into State; requirement of certificate or permit.

All honey bees shipped or moved into the State of Mississippi shall be accompanied by a certificate of inspection signed by the State Entomologist, State Apiary Inspector or corresponding official of the state or country from which such bees are shipped or moved. Such certificate shall certify to the apparent freedom of the bees and their combs and hives, from contagious and infectious diseases and parasites and must be based upon an actual inspection of the bees themselves within a period of sixty (60) days preceding the date of shipment; provided, that when honey bees are to be shipped into this state from other states or countries wherein no official apiary inspector or State Entomologist is available, the Mississippi Department of Agriculture and Commerce may issue permit for such shipment upon presentation of suitable evidence showing such bees to be free from disease. The provisions of this section shall not apply to shipments of live bees in wire cages, when without combs of honey.

HISTORY: Codes, Hemingway's 1921 Supp. § 3636b; 1930, § 6979; 1942, § 5001; Laws, 1920, ch. 209; Laws, 1972, ch. 369, § 3; Laws, 1991, ch. 329, § 1; Laws, 1991, ch. 530, § 20, eff from and after July 1, 1991.

RESEARCH REFERENCES

ALR.

Liability for injury or damage caused by bees. 86 A.L.R.3d 829.

Beekeeping regulation: validity and construction. 55 A.L.R.4th 1223.

§ 69-25-103. Department of Agriculture and Commerce empowered to deal with Africanized bees and bee diseases.

The Mississippi Department of Agriculture and Commerce shall have full and plenary power to deal with Africanized honey bees (Apris mellifera scutellata) and with American and European foul brood, and all other contagious or infectious diseases and parasites of honey bees which, in its opinion, may be prevented, controlled or eradicated; and shall have full power and is hereby authorized to make, promulgate and enforce such rules, ordinances and regulations and to perform such acts, through its agents or otherwise, as in its judgment may be necessary to control, eradicate or prevent the introduction, spread or dissemination of Africanized honey bees and all contagious diseases of honey bees and parasites as far as may be possible and all such rules, ordinances and regulations of said department shall have the force and effect of law.

HISTORY: Codes, Hemingway's 1921 Supp. § 3636c; 1930, § 6980; 1942, § 5002; Laws, 1920, ch. 209; Laws, 1972, ch. 369, § 4; Laws, 1991, ch. 329, § 2; Laws, 1991, ch. 530, § 21, eff from and after July 1, 1991.

RESEARCH REFERENCES

ALR.

Beekeeping regulation: validity and construction. 55 A.L.R.4th 1223.

§ 69-25-105. Authority to make inspections and to order removal, destruction or treatment of Africanized or infected bees.

The Mississippi Department of Agriculture and Commerce, its agents and employees, shall have authority to enter any depot, express office, storeroom, warehouse or premises for the purpose of inspecting any honey bees or beekeeping fixtures or appliances therein or thought to be therein, for the purpose of ascertaining whether said bees or fixtures are infected with any contagious or infectious disease or parasite or which they may have reason to believe are Africanized bees or have been or are being transported in violation of any of the provisions of this article.

The said department through its agents or employees may require the removal from this state of any honey bees or beekeeping fixtures which have been brought into the state in violation of the provisions of this article, or if finding any honey bees or fixtures infected with any contagious or infectious disease or parasite or if finding that such bees are Africanized or if such bees or fixtures have been exposed to danger of infection by such diseases, may require the destruction, treatment or disinfection of such infected or exposed bees, hives, fixtures or appliances.

HISTORY: Codes, Hemingway's 1921 Supp. § 3636d; 1930, § 6981; 1942, § 5003; Laws, 1920, ch. 209; Laws, 1972, ch. 369, § 5; Laws, 1991, ch. 329, § 3; Laws, 1991, ch. 530, § 22, eff from and after July 1, 1991.

RESEARCH REFERENCES

ALR.
Beekeeping regulation: validity and construction. 55 A.L.R.4th 1223.

Am. Jur.
37 Am. Jur. Proof of Facts 2d 711, Justifiable Destruction of Animal.

§ 69-25-107. Shipment of suspected materials may be prohibited.

The shipment or movement into this state of any used or secondhand beehives, honey combs, frames or other beekeeping fixtures is hereby prohibited except under such rules and regulations as may be prescribed by the Mississippi Department of Agriculture and Commerce.

HISTORY: Codes, Hemingway's 1921 Supp. § 3636e; 1930, § 6982; 1942, § 5004; Laws, 1920, ch. 209; Laws, 1972, ch. 369, § 6; Laws, 1991, ch. 530, § 23, eff from and after July 1, 1991.

RESEARCH REFERENCES

ALR.
Beekeeping regulation: validity and construction. 55 A.L.R.4th 1223.

§ 69-25-109. Penalty for violations of this article.

(1) Any person, firm or corporation violating any of the provisions of this article or of the rules or regulations of the Mississippi Department of Agriculture and Commerce, adopted in accordance with the provisions thereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment for not more than six (6) months in the county jail.

(2) In addition to the criminal penalty imposed under subsection (1) of this section, each violation of this article or the applicable rules and regulations established by the commissioner pertaining hereto shall subject the violator to administrative action as provided in Sections 69-25-51 through 69-25-63.

HISTORY: Codes, Hemingway's 1921 Supp. § 3636f; 1930, § 6983; 1942, § 5005; Laws, 1920, ch. 209; Laws, 1972, ch. 369, § 7; Laws, 1991, ch. 530, § 24; Laws, 2012, ch. 502, § 3, eff from and after July 1, 2012.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ARTICLE 4.

MISSISSIPPI HEMP CULTIVATION ACT.

Sec.

69-25-201. Short title; exclusivity.
69-25-203. Definitions.
69-25-205. Special fund.
69-25-207. Licensing and registration.
69-25-209. Transport of hemp.
69-25-211. Enforcement.
69-25-213. Negligent violations.
69-25-215. Nonnegligent violations.
69-25-217. Prohibitions.
69-25-219. General provisions.
69-25-221. Necessity of surety bond.
69-25-223. Implementation of provisions of article providing authority to administer Mississippi Hemp Cultivation Act subject to public or private funding; programs administered by Mississippi State University exempt from provisions of article.

§ 69-25-201. Short title; exclusivity.

This article shall be known as the "Mississippi Hemp Cultivation Act." The regulation of hemp cultivation and processing shall be governed exclusively by the provisions of the Mississippi Hemp Cultivation Act. A municipality, county or other political subdivision of this state shall not enact, adopt or enforce a rule, ordinance, order, resolution or other regulation that allows, prohibits or penalizes the cultivation, production or processing of hemp in this state.

HISTORY: Laws, 2020, ch. 413, § 1, eff from and after passage (approved June 29, 2020).

Editor's Notes — Laws of 2020, ch. 413, § 17, effective June 29, 2020, provides: "SECTION 17. Sections 1 through 11 of this act shall be codified in Chapter 25, Title 69, Mississippi Code of 1972."

§ 69-25-203. Definitions.

For purposes of this article, the following words and phrases shall have the meanings set forth below unless the context clearly indicates otherwise:

(a) "Bureau of Plant Industry" means a division of the Mississippi Department of Agriculture and Commerce created under the provision of Section 69-25-3.

(b) "Business entity" means a nonnatural person and includes nonprofit and for profit corporations, partnerships, limited liability corporations, and other legal entities recognized by law.

(c) "Commissioner" means the Commissioner of Agriculture and Commerce of the State of Mississippi. Where applicable under the provisions of this article, "commissioner" shall include the commissioner's designee.

(d) "Delta-9-tetrahydrocannabinol" means the sum of the percentage by weight of tetrahydrocannabinol acid multiplied by eight hundred seventy-seven thousandths (0.877) plus the percentage by weight of delta-9-tetrahydrocannabinol.

(e) "Department" means the Mississippi Department of Agriculture and Commerce.

(f) "Grower" means a person, business entity, joint venture or cooperative that cultivates, grows or harvests hemp.

(g) "Hemp" means the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol (THC) concentration of not more than three-tenths percent (0.3%) on a dry weight basis that is grown or processed under this article.

(h) "Legal description of land" means Global Position System coordinates and shall also include the metes and bounds to include township, range, and section for the location in which hemp is grown.

(i) "Person" means any person, firm, association, corporation or business entity.

(j) "Processor" means a person, business entity, joint venture or cooperative that receives hemp for processing into commodities, products or hemp seed. A processor also includes any such entity that brokers and/or stores hemp.

(k) "State plan" means the plan contemplated by 7 C.F.R. Part 990 Subpart B that a state must file for approval with the United States Secretary of Agriculture.

(*l*) "USDA" means the United States Department of Agriculture.

HISTORY: Laws, 2020, ch. 413, § 2, eff from and after passage (approved June 29, 2020).

Editor's Notes — Laws of 2020, ch. 413, § 17, effective June 29, 2020, provides: "SECTION 17. Sections 1 through 11 of this act shall be codified in Chapter 25, Title 69, Mississippi Code of 1972."

§ 69-25-205. Special fund.

There shall be established in the State Treasury a special fund for the department to administer the State Plan. The fund shall consist of amounts received from appropriations, and any other proceeds from gifts, grants, federal funds, application fees, registration fees, and any other funds, both public and private, made available for the purposes of this chapter. The fund shall be administered by the department. Unexpended monies remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited into the fund.

HISTORY: Laws, 2020, ch. 413, § 3, eff from and after passage (approved June 29, 2020).

Editor's Notes — Laws of 2020, ch. 413, § 17, effective June 29, 2020, provides: "SECTION 17. Sections 1 through 11 of this act shall be codified in Chapter 25, Title 69, Mississippi Code of 1972."

§ 69-25-207. Licensing and registration.

(1) Pursuant to the provisions of this article, cultivation and processing of hemp, as defined in Section 69-25-203, are authorized in this state. Cultivation and processing of hemp are subject to regulation by the department and may only be performed by persons or business entities that hold a valid license or registration issued hereunder.

(2) The commissioner shall create a State Plan for submission to and approval by the United States Department of Agriculture and the United States Secretary of Agriculture. The commissioner and department shall promulgate such reasonable regulations as necessary to implement the State Plan and provisions of this article. The commissioner and the department shall be authorized to promulgate any rule or regulation deemed necessary for the administration of the provisions of this article in compliance with any federal law, rule or regulation promulgated by the United States Department of Agriculture.

(3) The department is authorized to accept applications, and issue licenses and/or registrations for all hemp growers and hemp processors. The department shall adopt and enforce all rules and regulations related to those licenses and/or registrations.

(4) All hemp growers must be licensed by the department.

(5) All hemp processors must register with the department.

(6) All licensed holders and registered processors shall keep and maintain crop and/or processing records in accordance with rules and regulations adopted and enforced by the department. The department may subject the required records to inspection. The department may make an inspection for the purpose of ensuring compliance with:

(a) USDA guidelines;
(b) Provisions of this article;
(c) Department rules and regulations;
(d) Any terms or conditions of a license issued hereunder;
(e) Registration with the department; or
(f) A final department order directed to the grower's or processor's hemp operations or activities.

(7) All hemp growers and processors shall be subject to a background investigation conducted by the Department of Public Safety, which shall include both a state and federal background check.

HISTORY: Laws, 2020, ch. 413, § 4, eff from and after passage (approved June 29, 2020).

Editor's Notes — Laws of 2020, ch. 413, § 17, effective June 29, 2020, provides:

"SECTION 17. Sections 1 through 11 of this act shall be codified in Chapter 25, Title 69, Mississippi Code of 1972."

§ 69-25-209. Transport of hemp.

Hemp growers must keep a copy of their hemp grower's license in all vehicles used to transport hemp under normal cultivation activities. Any person transporting or delivering hemp for commerce purposes shall have a dated invoice, bill of lading, or manifest in his or her possession during the entire time he or she is transporting or delivering hemp. The invoice, bill of lading, or manifest shall include the following information:

(a) The seller's and the purchaser's license and/or registration number, name and address;

(b) The specific origin and destination of the hemp being transported;

(c) The quantity of hemp being transported; and

(d) Any additional information and/or documentation required by the department.

HISTORY: Laws, 2020, ch. 413, § 5, eff from and after passage (approved June 29, 2020).

Editor's Notes — Laws of 2020, ch. 413, § 17, effective June 29, 2020, provides: "SECTION 17. Sections 1 through 11 of this act shall be codified in Chapter 25, Title 69, Mississippi Code of 1972."

§ 69-25-211. Enforcement.

(1)(a) The commissioner or the commissioner's designee may enter, at reasonable times, upon any public or private property at which hemp is being cultivated or processed for the purpose of determining compliance with this chapter and rules adopted under it. The Director of the Bureau of Plant Industry may apply for, and any judge of a court of competent jurisdiction, may issue a search warrant as is necessary to achieve the purposes of this chapter relating to things, property or places within the court's territorial jurisdiction.

(b) If the commissioner or the commissioner's designee determines that emergency conditions exist requiring immediate action necessary to protect public health or safety of the environment, the commissioner or the commissioner's designee may issue an order stating the existence of such conditions and requiring specific actions be taken to mitigate those conditions without providing prior notice or an adjudication hearing.

(c) Any person to whom such an order is issued shall immediately comply with that order, and may apply to the Director of the Bureau of Plant Industry for an adjudication hearing. Upon receiving an application for an adjudication hearing, the director shall hold the hearing as soon as practicable and not later than thirty (30) days after receipt of the application. On the basis of the hearing, the director shall continue the order in effect, revoke it, or modify it.

(d) In addition to any other available remedies, the commissioner or the Mississippi Attorney General may apply to the circuit court in the county where any provision of this chapter or an order issued under paragraph (b) of this subsection is being violated for an injunction restraining any person from continuing the violation.

(e) An employee of the state or any division, agency, institution thereof involved in the administration and/or enforcement of this article, shall not be subject to prosecution for violations related to possession or transportation of hemp or cannabis in conjunction with the employee's duties arising under this chapter.

(2) In addition to any other liability or penalty provided by law, the department may revoke or refuse to issue or renew a hemp grower license or hemp processor registration and may impose a civil penalty for violations of:

(a) A license or registration requirement;

(b) License or registration terms or conditions;

(c) Department rules and regulations relating to growing or processing hemp; or

(d) A final order of the department that is specifically directed to the grower's or processor's hemp operations or activities.

(3) The department may impose administrative penalties for violations under this section in accordance with Section 69-25-51.

HISTORY: Laws, 2020, ch. 413, § 6, eff from and after passage (approved June 29, 2020).

Editor's Notes — Laws of 2020, ch. 413, § 17, effective June 29, 2020, provides: "SECTION 17. Sections 1 through 11 of this act shall be codified in Chapter 25, Title 69, Mississippi Code of 1972."

§ 69-25-213. Negligent violations.

(1) Upon a determination by the commissioner or the commissioner's designee, the following may constitute negligent violations:

(a) Failing to provide a legal description of land on which the grower produces hemp;

(b) Failing to obtain a license or other required authorization from the department;

(c) Failing to register with the department;

(d) Producing Cannabis sativa L. with a delta-9-tetrahydrocannabinol concentration of more than five-tenths percent (0.5%) on a dry weight basis; or

(e) Any other violation of the State Plan, including any rules and regulations set forth by the department.

(2) **Corrective action plan.**(a) A hemp grower shall comply with a plan established by the commissioner or the commissioner's designee to correct the negligent violation, including:

(i) A reasonable date by which the hemp grower shall correct the negligent violation; and

(ii) A requirement that the hemp grower shall periodically report to the commissioner or the commissioner's designee regarding the compliance with the corrective plan for a period of not less than the next two (2) calendar years.

(b) The department shall notify the Mississippi Bureau of Narcotics of all corrective action plans implemented by the commissioner or the commissioner's designee.

(3) **Result of negligent violation.** A hemp grower that negligently violates the State Plan shall not, as a result of that violation, be subject to any criminal enforcement action by a state, county or local government entity.

(4) **Repeat violations.** A hemp grower that negligently violates the State Plan three (3) times in a five-year period shall be ineligible to produce hemp for a period of five (5) years beginning on the date of the third violation.

HISTORY: Laws, 2020, ch. 413, § 7, eff from and after passage (approved June 29, 2020).

Editor's Notes — Laws of 2020, ch. 413, § 17, effective June 29, 2020, provides: "SECTION 17. Sections 1 through 11 of this act shall be codified in Chapter 25, Title 69, Mississippi Code of 1972."

§ 69-25-215. Nonnegligent violations.

If a hemp grower violates the State Plan, including growing hemp containing a delta-9-tetrahydrocannabinol (THC) concentration that exceeds three-tenths percent (0.3%) on a dry mass basis or a tolerance range as specified by USDA, with a culpable mental state greater than negligence as determined by the department, the commissioner shall immediately report the violation and the hemp grower to the United States Attorney General, the Mississippi Attorney General and the Mississippi Public Safety Commissioner. Such violations shall also be referred to the Mississippi Bureau of Narcotics for investigation. The Bureau of Narcotics may detain, seize and/or destroy the crop and may initiate a criminal case for any violation of this article or the Mississippi Uniform Controlled Substances Law. The Mississippi Attorney General shall, in person or by his or her designee, prosecute all criminal actions related to violations arising under this chapter relating to hemp, on behalf of the State. Violations of the State Plan that involve culpability greater than negligence must be reported to the United States Attorney General and the Mississippi Attorney General. The provisions of Section 69-25-213 shall not apply to nonnegligent violations.

HISTORY: Laws, 2020, ch. 413, § 8, eff from and after passage (approved June 29, 2020).

Editor's Notes — Laws of 2020, ch. 413, § 17, effective June 29, 2020, provides: "SECTION 17. Sections 1 through 11 of this act shall be codified in Chapter 25, Title 69, Mississippi Code of 1972."

§ 69-25-217. Prohibitions.

(1) It shall be unlawful for any person or business entity to:

(a) Violate this chapter or any rules or regulations promulgated under this chapter;

(b) Fail to comply with a corrective action plan issued by the commissioner under Section 69-25-213(2);

(c) Transport hemp or hemp materials in violation of Section 69-25-209 or rules or regulations adopted under this chapter; or

(d) Cultivate or grow hemp with a delta-9-tetrahydrocannabinol (THC) concentration of more than three-tenths percent (0.3%) on a dry weight basis.

(2) Any person or business entity that purposely, knowingly or recklessly violates this provision of this chapter relating to hemp production or processing shall be guilty of a misdemeanor and, upon conviction of the violation, shall be fined in an amount not to exceed Five Thousand Dollars ($5,000.00), or sentenced to imprisonment in the county jail for not more than one (1) year, or both such fine and imprisonment.

(3) Notwithstanding subsection (2) of this section, if any person or entity purposely, recklessly or knowingly cultivates or grows hemp with a delta-9-tetrahydrocannabinol (THC) concentration of more than one percent (1%) on a dry weight basis that person or entity shall be guilty of a felony punishable by imprisonment for not more than five (5) years, or a fine of not more than Ten Thousand Dollars ($10,000.00), or both such fine and imprisonment.

(4) For purposes of this section, the terms "purposely", "knowingly" and "recklessly" have the following meanings:

(a) "Purposefully" means a person acts purposely with respect to a material element of an offense if:

(i) The element involves the nature of his or her conduct or a result thereof, it is his or her conscious object to engage in conduct of that nature or to cause such a result; and

(ii) The element involves the attendant circumstances, he or she is aware of the existence of such circumstances or he or she believes or hopes that they exist.

(b) "Knowingly" means a person acts knowingly with respect to a material element of an offense if:

(i) The element involves the nature of his or her conduct or the attendant circumstances, he or she is aware that his or her conduct is of that nature or that such circumstances exist; and

(ii) The element involves a result of his or her conduct, he or she is aware that it is practically certain that his or her conduct will cause such a result.

(c) "Recklessly" means a person acts recklessly with respect to a material element of an offense when he or she consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his or her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him or her, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

HISTORY: Laws, 2020, ch. 413, § 9, eff from and after passage (approved June 29, 2020).

Editor's Notes — Laws of 2020, ch. 413, § 17, effective June 29, 2020, provides: "SECTION 17. Sections 1 through 11 of this act shall be codified in Chapter 25, Title 69, Mississippi Code of 1972."

§ 69-25-219. General provisions.

(1) Any person convicted of a felony relating to a controlled substance under state or federal law before, on or after the date of enactment of this article [June 29, 2020], shall be ineligible, during the ten-year period following the date of the conviction to participate in the program established under this article and to produce hemp under any regulations or guidelines issued under this article.

(2) Any person who materially falsifies any information contained in an application to participate in the State Plan established under this article shall be ineligible to participate in the State Plan.

(3) In addition to any inspection conducted, the department may inspect any hemp crop at any time and take a representative composite sample for analysis. It shall be the duty of the department to take such samples and deliver them to the State Chemist for examination and analysis. It shall be the duty of the State Chemist to cause as many analyses to be made of samples delivered to him or her by the department as may be necessary to properly implement the intent of this article. The State Chemist shall make a report of such analyses to the department.

(4) The department shall charge growers and processors a fee or fees as determined by the department in a sufficient amount to cover the costs required to administer and enforce the provisions of this chapter.

HISTORY: Laws, 2020, ch. 413, § 10, eff from and after passage (approved June 29, 2020).

Editor's Notes — Implementation of the provisions of this article that provide the authority to administer the Mississippi Hemp Cultivation Act are subject to legislative appropriation or receipt of funding. See § 69-25-223.

Laws of 2020, ch. 413, § 17, effective June 29, 2020, provides:

"SECTION 17. Sections 1 through 11 of this act shall be codified in Chapter 25, Title 69, Mississippi Code of 1972."

§ 69-25-221. Necessity of surety bond.

Necessity of surety bond. No person shall operate as a hemp processor without first having secured a surety bond pursuant to this section. The commissioner shall promulgate rules and regulations as necessary to require hemp processors to secure a surety bond. A hemp processor may file with the department, in lieu of a surety bond, a certificate of deposit or irrevocable letter of credit from any bank or banking corporation insured by the Federal Deposit Insurance Corporation. Rules and regulations required for certificates of deposit and irrevocable letters of credit shall be promulgated by the commissioner.

HISTORY: Laws, 2020, ch. 413, § 11, eff from and after passage (approved June 29, 2020).

Editor's Notes — Laws of 2020, ch. 413, § 17, effective June 29, 2020, provides: "SECTION 17. Sections 1 through 11 of this act shall be codified in Chapter 25, Title 69, Mississippi Code of 1972."

§ 69-25-223. Implementation of provisions of article providing authority to administer Mississippi Hemp Cultivation Act subject to public or private funding; programs administered by Mississippi State University exempt from provisions of article.

(1) The provisions of this article which provides authority to the Commissioner of Agriculture and Commerce and the Mississippi Department of Agriculture and Commerce to administer the provisions of the "Mississippi Hemp Cultivation Act," shall be subject to legislative appropriation or receipt of necessary funding from any private or public entity for purposes of implementation.

(2) The provisions of this article shall not have any effect upon any programs administered by Mississippi State University, which shall remain exempt, as such programs related to the educational, research or testing functions performed by Mississippi State Chemical Laboratory, shall continue to function in accordance with the mission of the university, as approved by the Board of Trustees of State Institutions of Higher Learning.

HISTORY: Laws, 2020, ch. 413, § 16, eff from and after passage (approved June 29, 2020).

Editor's Notes — Laws of 2020, ch. 413, § 17, effective June 29, 2020, provides: "SECTION 17. Sections 1 through 11 of this act shall be codified in Chapter 25, Title 69, Mississippi Code of 1972."

CHAPTER 26.

PEST CONTROL COMPACT

Sec.
69-26-1. Pest Control Compact.
69-26-2. State government agencies may cooperate with Insurance Fund.
69-26-3. Bylaws and amendments to be filed with Commissioner of Agriculture and Commerce.
69-26-4. Mississippi compact administrator; duties.
69-26-5. Request for assistance from Insurance Fund.
69-26-6. Reimbursement of expenditures for Compact control or eradication program.
69-26-7. "Executive head" defined.

§ 69-26-1. Pest Control Compact.

The Pest Control Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

PEST CONTROL COMPACT

Article I

Findings

The party states find that:

(a) In the absence of the higher degree of cooperation among them possible under this Compact, the annual loss of approximately One Hundred Thirty-seven Billion Dollars ($137,000,000,000.00) from the depredations of pests is virtually certain to continue, if not to increase.

(b) Because of the varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests which present serious dangers to them.

(c) The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another, to complement each other's activities when faced with conditions of infestation and reinfestation.

(d) While every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crops and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an Insurance Fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interest, the most equitable means of financing cooperative pest eradication and control programs.

Article II

Definitions

As used in this Compact, unless the context clearly requires a different construction:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) "Requesting state" means a state which invokes the procedures of the Compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states.

(c) "Responding state" means a state requested to undertake or intensify the measures referred to in subdivision (b) of this Article.

(d) "Pest" means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses, or other plants of substantial value.

(e) "Insurance Fund" means the Pest Control Insurance Fund established pursuant to this Compact.

(f) "Governing Board" means the administrators of this Compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this Compact.

(g) "Executive committee" means the committee established pursuant to Article V(e) of this Compact.

Article III

The Insurance Fund

There is hereby established a Pest Control Insurance Fund for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this Compact. The Insurance Fund shall contain monies appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this Compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the Insurance Fund shall not accept any donation or grant whose terms are inconsistent with any provision of this Compact.

Article IV

The Insurance Fund, Internal Operations and Management

(a) The Insurance Fund shall be administered by a Governing Board and Executive Committee as hereinafter provided. The actions of the Governing Board and the Executive Committee pursuant to this Compact shall be deemed the actions of the Insurance Fund.

(b) The members of the Governing Board shall be entitled to one vote on such board. No action of the Governing Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Governing Board is cast in favor thereof. Action of the Governing Board shall be only at a meeting at which a majority of the members are present.

(c) The Insurance Fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the Governing Board may provide.

(d) The Governing Board shall elect annually, from among its members, a chairman, a vice chairman, a secretary and a treasurer. The chairman may not succeed himself. The Governing Board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the Governing Board. The Governing Board shall make provision for the bonding of such of the officers and employees of the Insurance Fund as may be appropriate.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Insurance Fund and shall fix the duties and compensation of such personnel. The Governing Board in its bylaws shall provide for the personnel policies and programs of the Insurance Fund.

(f) The Insurance Fund may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.

(g) The Insurance Fund may accept for any of its purposes and functions under this Compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, utilize and dispose of the same. Any donation, gift, or grant accepted by the Governing Board pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this Article shall be reported in the annual report of the Insurance Fund. Such report shall include the nature, amount and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender.

(h) The Governing Board shall adopt bylaws for the conduct of the business of the Insurance Fund and shall have the power to amend and to rescind these bylaws. The Insurance Fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(i) The Insurance Fund annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. The Insurance Fund may make such additional reports as it may deem desirable.

(j) In addition to the powers and duties specifically authorized and imposed, the Insurance Fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this Compact.

Article V

Compact and Insurance Fund Administration

(a) In each party state there shall be a Compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:

1. Assist in the coordination of activities pursuant to the Compact in his state; and
2. Represent his state on the Governing Board of the Insurance Fund.

(b) If the laws of the United States specifically so provide, or if administrative provision is made therefore within the federal government, the United States may be represented on the Governing Board of the Insurance Fund by not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the Governing Board or the Executive Committee thereof.

(c) The Governing Board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the Insurance Fund and, consistent with the provisions of the Compact, supervising and giving direction to the expenditure of monies from the Insurance Fund. Additional meetings of the Governing Board shall be held on call of the chairman, the Executive Committee, or a majority of the membership of the Governing Board.

(d) At such times as it may be meeting, the Governing Board shall pass upon applications for assistance from the Insurance Fund and authorize disbursements therefrom. When the Governing Board is not in session, the Executive Committee thereof shall act as agent of the Governing Board, with full authority to act for it in passing upon such applications.

(e) The Executive Committee shall be composed of the chairman of the Governing Board and four additional members of the Governing Board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The Governing Board shall make such geographic groupings. If there is representation of the United States on the Governing Board, one such representative may meet with the Executive Committee. The chairman of the Governing Board shall be chairman of the Executive Committee. No action of the Executive Committee shall be binding unless taken at a meeting at which at least four members of such Committee are present and vote in favor thereof. Necessary expenses of each of the five members of the Executive Committee incurred in attending meetings of such Committee, when not held at the same time and place as a meeting of the Governing Board, shall be charges against the Insurance Fund.

Article VI

Assistance and Reimbursement

(a) Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:

1. The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this Compact.
2. The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this Compact.

(b) Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the Governing Board to authorize expenditures from the Insurance Fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use monies available from the Insurance Fund expeditiously and efficiently to assist in affording the protection requested.

(c) In order to apply for expenditures from the Insurance Fund, a requesting state shall submit the following in writing:

1. A detailed statement of the circumstances which occasion the request for the invoking of the Compact.
2. Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass, or other plant having a substantial value to the requesting state.
3. A statement of the extent of the present and projected program of the requesting state and its subdivisions, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefore, in connection with the eradication, control, or prevention of introduction of the pest concerned.
4. Proof that the expenditures being made or budgeted as detailed in item 3 do not constitute a reduction of the effort for the control or

eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in item 3 constitutes a normal level of pest control activity.

5. A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the Compact in the particular instance can be abated by a program undertaken with the aid of monies from the Insurance Fund in one (1) year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.

6. Such other information as the Governing Board may require consistent with the provisions of this Compact.

(d) The Governing Board or Executive Committee shall give due notice of any meeting at which an application for assistance from the Insurance Fund is to be considered. Such notice shall be given to the Compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.

(e) Upon the submission as required by paragraph (c) of this Article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this Compact and justified thereby, the Governing Board or Executive Committee shall authorize support of the program. The Governing Board or Executive Committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the Governing Board or Executive Committee, with respect to an application, together with the reasons therefore shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

(f) A requesting state which is dissatisfied with a determination of the Executive Committee shall upon notice in writing given within twenty (20) days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the Governing Board. Determinations of the Executive Committee shall be reviewable only by the Governing Board at one of its regular meetings, or at a special meeting held in such manner as the Governing Board may authorize.

(g) Responding states required to undertake or increase measures pursuant to this Compact may receive monies from the Insurance Fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the Insurance Fund. The Governing Board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.

(h) Before authorizing the expenditure of monies from the Insurance Fund pursuant to an application of a requesting state, the Insurance Fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the federal government and shall request the appropriate agency or agencies of the federal government for such assistance and participation.

(i) The Insurance Fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the Insurance Fund, cooperating federal agencies, states, and any other entities concerned.

Article VII

Advisory and Technical Committees

The Governing Board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations upon request of the Governing Board or Executive Committee. An advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the Insurance Fund being considered by such Board or Committee and the Board or Committee may receive and consider the same: provided that any participant in a meeting of the Governing Board or Executive Committee held pursuant to Article VI(d) of the Compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the Governing Board or Executive Committee makes its disposition of the application.

Article VIII

Relations with Nonparty Jurisdictions

(a) A party state may make application for assistance from the Insurance Fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the Governing Board or Executive Committee in the same manner as an application with respect to a pest within a party state, except as provided in this Article.

(b) At or in connection with any meeting of the Governing Board or Executive Committee held pursuant to Article VI(d) of this Compact a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the Governing Board or Executive Committee may provide. A nonparty state shall not be entitled to review of any determination made by the Executive Committee.

(c) The Governing Board or Executive Committee shall authorize expenditures from the Insurance Fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The Governing Board or Executive Committee may set any conditions which it deems appropriate with respect to the expenditure of monies from the Insurance Fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect the interests of the Insurance Fund with respect to expenditures and activities outside of party states.

Article IX

Finance

(a) The Insurance Fund shall submit to the executive head or designated officer or officers of each party state a budget for the Insurance Fund for such period as may be required by the laws of that party state for a presentation to the legislature thereof.

(b) Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The request for appropriations shall be apportioned among the party states as follows: one-tenth (1/10) of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the Insurance Fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

(c) The financial assets of the Insurance Fund shall be maintained in two accounts to be designated respectively as the "Operating Account" and the "Claims Account." The Operating Account shall consist only of those assets necessary for the administration of the Insurance Fund during the next ensuing two-year period. The Claims Account shall contain all monies not included in the Operating Account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the Insurance Fund for a period of three years. At any time when the Claims Account has reached its maximum limit or would reach its maximum limit by the addition of monies requested for appropriation by the party states, the Governing Board shall reduce its budget requests on a pro rata basis in such manner as to keep the Claims Account within such maximum limit. Any monies in the Claims Account by virtue of conditional donations, grants, or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such monies are available to meet demands arising out of the claims.

(d) The Insurance Fund shall not pledge the credit of any party state. The Insurance Fund may meet any of its obligations in whole or in part with monies available to it under Article IV(g) of this Compact, provided that the Governing Board take specific action setting aside such monies prior to incurring any obligation to be met in whole or in part in such manner. Except where the Insurance Fund makes use of monies available to it under Article IV(g) hereof, the Insurance Fund shall not incur any obligation prior to the allotment of monies by the party states adequate to meet the same.

(e) The Insurance Fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Insurance Fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Insurance Fund shall be audited yearly by a certified or licensed public accountant and report of the audit shall be included in and become part of the annual report of the Insurance Fund.

(f) The accounts of the Insurance Fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the Insurance Fund.

Article X

Entry Into Force and Withdrawal

(a) This Compact shall enter into force when enacted into law by any five (5) or more states. Thereafter, this Compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two (2) years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article XI

Construction and Severability

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating herein the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

HISTORY: Laws, 2006, ch. 442, § 1, eff from and after July 1, 2006.

Comparable Laws from other States — Arkansas: A.C.A. § 2-16-901 et seq.

California: Cal Food & Agr Code § 8801 et seq.
Delaware: 3 Del. C. § 9001
Kansas: K.S.A. § 2-2135 et seq.
Maine: 7 M.R.S. § 2311 et seq.
Michigan: MCLS § 286.501 et seq.
New Hampshire: RSA 430:21 et seq.
Texas: Tex. Agric. Code § 79.001 et seq.

§ 69-26-2. State government agencies may cooperate with Insurance Fund.

Consistent with law and within available appropriations, the departments, agencies and officers of this state may cooperate with the Insurance Fund established by the Pest Control Compact.

HISTORY: Laws, 2006, ch. 442, § 2, eff from and after July 1, 2006.

§ 69-26-3. Bylaws and amendments to be filed with Commissioner of Agriculture and Commerce.

Pursuant to Article IV(h) of the Compact, copies of bylaws and amendments thereto shall be filed with the Commissioner of Agriculture and Commerce.

HISTORY: Laws, 2006, ch. 442, § 3, eff from and after July 1, 2006.

§ 69-26-4. Mississippi compact administrator; duties.

The Compact administrator for this state shall be Commissioner of Agriculture and Commerce. The duties of the Compact administrator shall be deemed a regular part of the duties of this office.

HISTORY: Laws, 2006, ch. 442, § 4, eff from and after July 1, 2006.

§ 69-26-5. Request for assistance from Insurance Fund.

Within the meaning of Article VI(b) or VIII(a), a request or application for assistance from the Insurance Fund may be made by the Commissioner of Agriculture and Commerce or the Governor whenever in such official's judgment the conditions qualifying this state for such assistance exist and it would be in the best interest of this state to make such request.

HISTORY: Laws, 2006, ch. 442, § 5, eff from and after July 1, 2006.

§ 69-26-6. Reimbursement of expenditures for Compact control or eradication program.

The department, agency or officer expending or becoming liable for an expenditure on account of a control or eradication program undertaken or intensified pursuant to the Compact shall have credited to his account, in the state treasury the amount or amounts of any payments made to this state to defray the cost of such program, or any part thereof, or as reimbursement thereof.

HISTORY: Laws, 2006, ch. 442, § 6, eff from and after July 1, 2006.

§ 69-26-7. "Executive head" defined.

As used in this Compact, with reference to this state, the term "executive head" shall mean the Governor.

HISTORY: Laws, 2006, ch. 442, § 7, eff from and after July 1, 2006.

CHAPTER 27.

SOIL CONSERVATION

Article 1. Districts. 69-27-1
Article 3. Federal Aid Projects. 69-27-101
Article 5. County Aid in Certain Counties. 69-27-201
Article 7. Soil and Water Conservation Cost-Share Program. 69-27-301
Article 9. Acquisition of Heavy or Specialized Machinery or Equipment Necessary for Installation of Soil and Water Conservation Measures. 69-27-331
Article 11. Natural Resources Conservation Education Fund. 69-27-401

ARTICLE 1.

DISTRICTS.

Sec.

69-27-1. Short title.
69-27-2. State Soil and Water Conservation Committee renamed; transfer of powers and duties to State Soil and Water Conservation Commission.
69-27-3. Legislative determinations and declarations of policy.
69-27-5. Levee districts excepted.
69-27-7. Definitions.
69-27-9. State Soil and Water Conservation Commission; members; compensation; seal, records, rules and regulations.
69-27-11. Soil and Water Conservation Commission employees; office of accommodations.
69-27-13. General duties and powers of Commission.
69-27-14. Wildflower Seed Revolving Fund.
69-27-15. Soil and Water Conservation districts; petition for creation.
69-27-17. Soil and water conservation districts; hearing and determination of necessity therefor.
69-27-19. Soil and water conservation districts; referendum; commission to pay expenses.
69-27-21. Results of referendum; determination of district's administrative feasibility.
69-27-23. Organization of soil and water conservation district; procedure; certificate of due organization.
69-27-24. Authority of municipalities to contribute to soil conservation districts.
69-27-25. Subsequent petitions may be filed twelve months after the negative determination.
69-27-27. Inclusion of additional territory within existing district.
69-27-29. Cities and towns, etc., to be included within district.
69-27-31. Election of three commissioners for each district.
69-27-33. Appointment, qualifications, and tenure of commissioners.
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69-27-37. Adoption of land-use regulations.
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69-27-45. Board of adjustment; procedure; meetings; records.
69-27-47. Board of adjustment; hearing on land use regulations.
69-27-49. Appeal from order of board of adjustment.

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69-27-51. Cooperation between districts.
69-27-53. State agencies to cooperate.
69-27-55. Adjustment of boundaries or withdrawal of lands from district; consolidation with another district; petition.
69-27-57. Adjustment or consolidation; hearing and determination of administrative feasibility.
69-27-59. Adjustment or consolidation; applicability and interpretation of certain provisions.
69-27-61. Adjustment or consolidation; division of assets.
69-27-63. Discontinuance of districts.
69-27-65. Certain counties authorized to lease road machinery for soil conservation work.
69-27-67. Counties may contribute to soil conservation districts.
69-27-69. Controlling effect of article.

§ 69-27-1. Short title.

This article may be known and cited as the "Soil and Water Conservation District Law."

HISTORY: Codes, 1942, § 4940; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 1, eff from and after January 1, 1969.

Cross References — State Forestry Commission, see §§ 49-19-1 et seq.
Surface mining and reclamation of land, see § 53-7-1 et seq.
Definition of "soil and water conservation district," see § 69-27-301.

OPINIONS OF THE ATTORNEY GENERAL

The Tunica County Soil and Water Conservation District is authorized to implement a beaver control program as a "preventive and control measure" under Miss. Code Ann. § 69-27-35(c). County boards of supervisors are authorized to expend public funds to eradicate and control beaver populations. Dulaney, March 23, 2007, A.G. Op. #07-00150, 2007 Miss. AG LEXIS 62.

RESEARCH REFERENCES

ALR.
What constitutes impairment of proposed intervenor's interest to support intervention as matter of right under Rule 24(a)(2) of Federal Rules of Civil Procedure in environmental actions. 76 A.L.R. Fed. 762.

§ 69-27-2. State Soil and Water Conservation Committee renamed; transfer of powers and duties to State Soil and Water Conservation Commission.

The State Soil and Water Conservation Committee is hereby renamed the State Soil and Water Conservation Commission. The State Soil and Water Conservation Commission shall retain all powers and duties as were accorded to the committee, and wherever the term "State Soil and Water Conservation Committee" or "committee" appears in any law heretofore or hereafter enacted, the same shall be construed to mean the State Soil and Water Conservation Commission.

HISTORY: Laws, 1974, ch. 357, § 1, eff from and after passage (approved March 14, 1974).

§ 69-27-3. Legislative determinations and declarations of policy.

It is hereby declared, as a matter of legislative determination:

(a) **The condition. —** That good soil and usable water are essential to the success of agricultural activities in the State of Mississippi; that our farms, forests and grazing lands are among the basic assets of the state; and that the preservation of these lands and usable waters is necessary to protect and promote the health, safety and prosperity of the people.

That improper land usage causes the breaking of natural cover, and results in serious soil erosion of the farms, forests and grazing lands by uncontrolled waters; that erosion feeds itself, causing an accelerated washing of sloping fields and pastures, speeding up with the removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erodible subsoil; that failure by any landowner or operator to conserve the soil and water and control erosion upon his lands causes a washing of soil from his lands onto other lands and makes the conservation of soil and water and control of erosion on such other lands difficult or impossible; that good soil and water usage is possible only through joint actions of farmers, ranchers and foresters made possible through legislative action.

(b) **The consequences. —** That the consequences of such soil erosion in the form of soil-washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors and the movement of silt into creeks, rivers, ponds, lakes and bayous contributing to the pollution of the surface waters of the state; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific process for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground and surface water reserve, which causes water shortages, intensifies periods of drought and causes crop failures; and increase in the speed and volume of rainfall runoff, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings and other property from floods; and losses in navigation, hydro-electric power, municipal water supply, farming and grazing. Other consequences are the loss of surface soil and water because of the denuding of the forests, and the abuse and erosion of sloping lands; the declining mean low flow of the rivers reducing the amount of surface water available seasonally for beneficial use; the decrease in effectiveness and decline of ground water reaching aquifers which provide a source of water for beneficial use; and the increase in rates of runoff from sloping land, adding to flood damage of the flood plains and valleys of the state; all adding to the drainage problem.

(c) **The appropriate corrective methods. —** That to conserve soil and water resources and control and prevent soil erosion, it is necessary that practices contributing to soil and water wastage and soil erosion be discouraged and discontinued, and appropriate water and soil conserving practices be adopted and carried out; that among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of terraces, terrace outlets, check dams, dikes, ponds, lakes, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; afforestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops, retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erodible areas and areas now badly gullied or otherwise eroded.

(d) **Declaration of policy. —** It is hereby declared to be the policy of the legislature to provide for the conservation of the water and soil resources of this state, and for the control and prevention of soil erosion, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, prosperity, and general welfare of the people of this state.

It is further declared to be the policy of the legislature to alleviate and prevent flood damage; to conserve the waters of the state through improvement and cover, and through impoundments and effective use for various beneficial purposes; to develop private lands and waters of the state for recreational purposes; to promulgate soil and water conservation practices and measures which beautify the landscape, and promote the economic welfare of communities, counties, and areas of the state; and to provide leadership through soil and water conservation districts to other governmental agencies, departments and private groups in the promotion of the conservation of land, water, and related resources.

HISTORY: Codes, 1942, § 4941; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 2, eff from and after January 1, 1969.

Cross References — Conservation and development of water resources, see §§ 51-3-1 et seq.

Preparation of plans for developing state, see §§ 57-1-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

The Tunica County Soil and Water Conservation District is authorized to implement a beaver control program as a "preventive and control measure" under Miss. Code Ann. § 69-27-35(c). County boards of supervisors are authorized to expend public funds to eradicate and control beaver populations. Dulaney, March 23, 2007, A.G. Op. #07-00150, 2007 Miss. AG LEXIS 62.

§ 69-27-5. Levee districts excepted.

None of the provisions of this article shall apply to any county which is in whole or in part within a levee district bordering on the Mississippi River, unless an order has been passed by the board of supervisors of such county after thirty (30) days notice by publication of its intention so to do.

HISTORY: Codes, 1942, § 4955; Laws, 1938, ch. 253.

§ 69-27-7. Definitions.

Wherever used or referred to in this article, unless a different meaning clearly appears from the context:

(a) "District" or "soil and water conservation district" means a governmental subdivision of this state, and a public body, corporate and politic, organized in accordance with the provisions of this article, for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(b) "Commissioner" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this article.

(c) "Committee" or "State Soil and Water Conservation Committee" means the state and soil and water conservation commission as renamed under the provisions of Section 67-27-2 and created in Section 69-27-9.

(d) "Petition" means a petition filed under the provisions of Section 69-27-15 for the creation of a district.

(e) "Nominating petition" means a petition filed under the provisions of Section 69-27-31 to nominate candidates for the office of commissioner of a soil and water conservation district.

(f) "State" means the State of Mississippi.

(g) "Agency of this state" includes the government of this state and any subdivision, agency or instrumentality, corporate or otherwise, of the government of this state.

(h) "United States" or "agencies of the United States" includes the United States of America, the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(i) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(j) "Landowner" or "owner of land" includes any person, firm or corporation who shall hold legal or equitable title to any lands lying within a district organized under the provisions of this article.

(k) "Land operator" or "operator of land" includes any person, firm or corporation, other than the owner, who shall be in possession of any lands lying within a district organized under the provisions of this article, whether as lessee, renter, tenant or otherwise.

(*l*) "Due notice" means notice published at least three (3) times with an interval of at least seven (7) days between each publication date, in a newspaper of general circulation within the area where the land proposed to be included in a conservation district is located, or if no such newspaper or general circulation be available, by posting at a reasonable number (not less than five (5)) of conspicuous places within such area, such posting to include posting one (1) copy upon the bulletin board of the courthouse of each county where any of the lands in such proposed district may be located. Notice shall also be given by United States mail to all of the landowners of the proposed district or the district of any hearing or election. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

HISTORY: Codes, 1942, § 4942; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 3; Laws, 1974, ch. 357, § 2, eff from and after passage (approved March 14, 1974).

Editor's Notes — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-9. State Soil and Water Conservation Commission; members; compensation; seal, records, rules and regulations.

(1) The State Soil and Water Conservation Commission shall be constituted as follows:

(a) Eleven (11) voting members:

(i) The Commissioner of Agriculture and Commerce;

(ii) The State Forester;

(iii) The President of the Mississippi Association of Soil and Water Conservation District Commissioners;

(iv) The first vice president of the association;

(v) The second vice president of the association;

(vi) The immediate or most recent ex-president of the association willing and able to serve; and

(vii) Five (5) members to be elected from the membership of the soil and water conservation district commissioners at the annual meeting of the association, one (1) from each United States congressional district by a caucus of the association members from each congressional district as constituted at the time of the caucus, to be elected as follows: First District, one (1) member elected for a one-year term, beginning January 1, 1968, and ending January 1, 1969, his successor to be similarly elected at the 1968 annual meeting of the association for a three-year term ending January 1, 1972, and each successor elected in the succeeding third annual meeting for a three-year term; Second District, one (1) member elected for a two-year term beginning January 1, 1968, and ending January 1, 1970, his successor to be similarly elected at the 1969 annual meeting of the association for a three-year term ending January 1, 1973, and each successor elected in the succeeding third annual meeting for a three-year term; Third District, election to be similar to the Second District; Fourth District, one (1) member elected for a three-year term beginning January 1, 1968, and ending January 1, 1971, each successor to be similarly elected at the succeeding third annual meeting for a three-year term; Fifth District, election to be similar to Fourth District.

(viii) The elected members of the board as constituted on January 15, 2003, shall continue to serve until the expiration of their respective terms. As the terms of the five (5) members expire, the members shall be elected as follows: one (1) member from each congressional district by caucus of the association members from each congressional district as constituted at the time of the caucus and the remainder to be elected from the state at large by the membership of the association. The position and term of the member elected from the Third District whose term expires January 1, 2004, shall be the term and position of the at large member.

(b) The purpose of the above procedure is to provide that when put into effect, elected members will serve three-year staggered terms. The State Soil and Water Conservation Commission is empowered to adopt and carry out procedures for filling unexpired terms of its elected members. The incumbent will continue to serve until his successor is duly qualified and enters into the duties of his office.

(c) Two (2) members shall serve ex officio and without voting power, but with all privileges of discussion and debate as follows:

(i) The Director of the State Extension Service; and

(ii) The Director of the State Agricultural and Forestry Experimental Station.

(d) Such nonvoting ex officio member who, due to the pressure of his other required official duties, believes that he will be unable to regularly attend meetings of the commission shall designate a substitute to attend in his stead with the same rights and privileges that he would have had.

(2) The commission shall designate its chairman and vice chairman and may, from time to time, change such designation. A majority of the voting members of the commission shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. The voting members of the commission shall receive a per diem at the uniform rate established in Section 25-3-69, Mississippi Code of 1972, for their services on the commission for not more than thirty-six (36) days in any one calendar year. In addition, and in the discretion of the commission, all members may be entitled to expenses, including traveling expenses, necessar-

ily incurred in the discharge of their duties on the commission, not to exceed the rate established in Section 25-3-41, Mississippi Code of 1972, for state officers and employees. The commission may provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property, shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations and orders issued or adopted, and shall provide for an annual audit of the accounts of receipts and disbursements by the State Auditor.

(3) The commission shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this article.

HISTORY: Codes, 1942, § 4943; Laws, 1938, ch. 253; Laws, 1960, ch. 158; Laws, 1968, ch. 246, § 4; Laws, 1972, ch. 437, § 1; Laws, 1974, ch. 357, § 3; Laws, 1989, ch. 367, § 1; Laws, 2003, ch. 356, § 1, eff from and after passage (approved Mar. 12, 2003).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

Cross References — Duties and powers of state forester, generally, see § 49-19-3.

Duties of commissioner, generally, see § 69-1-13.

OPINIONS OF THE ATTORNEY GENERAL

Appointments to this board should be reviewed under the last five-district plan which was in effect. Canon, Jan. 16, 2003, A.G. Op. #03-0016.

§ 69-27-11. Soil and Water Conservation Commission employees; office of accommodations.

The State Soil and Water Conservation committee may employ an administrative officer and such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The committee may call upon the Attorney General of the state for such legal services as it may require, or may employ its own counsel and legal staff. It shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees such powers and duties as it may deem proper. The committee shall supply itself with suitable office accommodations at Mississippi State University of Agriculture and Applied Science or at Jackson, or at any place where the committee shall designate. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning shall, insofar as may be possible under available appropriations, and having due regard for the needs of the agency to which the request is directed, assign or detail to the committee, members of the staff or personnel of such agency or institution of learning, the duty of making such special reports, surveys or studies as the committee may request.

HISTORY: Codes, 1942, § 4943; Laws, 1938, ch. 253; Laws, 1960, ch. 158; Laws, 1968, ch. 246, § 4, eff from and after January 1, 1969.

Editor's Notes — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-13. General duties and powers of Commission.

The State Soil and Water Conservation Commission shall have the following duties and powers:

(a) To offer any assistance as may be appropriate to the commissioners of soil and water conservation districts in the carrying out of their powers and programs.

(b) To keep the commissioners of each of the districts informed of the activities and experience of all other districts, and to facilitate cooperation between districts.

(c) To coordinate the programs of the soil and water conservation districts.

(d) To secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state in the work of the districts.

(e) To disseminate information concerning the activities and programs of the soil and water conservation districts, and to encourage the formation of districts.

(f) To seek and receive grants of monies, and other assets, from any source to carry out this article.

(g) To distribute any appropriated or other funds or assets under its control, from state, federal or other governmental agencies or political subdivisions, or from private grants, including matching funds to districts.

(h) To establish and administer qualification standards for district commissioners and officers.

(i) To give guidance and overall supervision to districts when assistance is requested, or acceptable.

(j) To study, classify and evaluate land use needs and problems in the State of Mississippi; to make recommendations leading to adoption of land use policy and broad guidelines for meeting the needs and problems so identified.

(k) To demonstrate to landowners and operators within the state, equipment that will demonstrate energy and soil and water conservation.

(*l*) To enter into and to authorize the executive director to execute with the approval of the commission, contracts, grants, cooperative agreements and memoranda of understanding with any federal or state agency or subdivision thereof, or any public or private institution location inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the purposes of this article.

(m) To cooperate with the Commission on Environmental Quality in addressing agricultural nonpoint source pollution. Subject to Section 49-17-13, Mississippi Code of 1972, the Commission on Environmental Quality and the commission shall enter into a memorandum of understanding which shall establish the commission's role in nonpoint source pollution issues.

HISTORY: Codes, 1942, § 4943; Laws, 1938, ch. 253; Laws, 1960, ch. 158; Laws, 1968, ch. 246, § 4; Laws, 1972, ch. 437, § 1; Laws, 1993, ch. 541, § 1; Laws, 1996, ch. 390, § 1, eff from and after July 1, 1996.

Editor's Notes — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

Cross References — Duties and powers of state forester, generally, see § 49-19-3.

Surface mining and reclamation of land, see § 53-7-1 et seq.

Duties of commissioner, generally, see § 69-1-13.

§ 69-27-14. Wildflower Seed Revolving Fund.

(1) There is hereby created in the State Treasury a fund designated as the Wildflower Seed Revolving Fund to be used by the Mississippi Soil and Water Conservation Commission to contract for the purchase of wildflower seeds from public or private providers, for resale to local conservation districts or other governmental entities for planting programs.

(2) The Wildflower Revolving Fund shall be funded by monies received from the sale of seeds to the local conservation districts or other governmental entities. Monies collected from the sales shall be deposited into the Wildflower Revolving Fund. The State Treasurer shall make disbursements for payment of purchase of wildflower seeds upon requisition by the Soil and Water Conservation Commission and upon the issuance of warrants by the Department of Finance and Administration.

HISTORY: Laws, 1996, ch. 443, § 1, eff from and after July 1, 1996.

§ 69-27-15. Soil and Water Conservation districts; petition for creation.

Any twenty-five (25) owners of land lying within the limits of the territory proposed to be organized into a district may file a petition with the State Soil and Water Conservation Committee asking that a soil and water conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

(a) The proposed name of said district.

(b) That there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the territory described in the petition.

(c) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate.

(d) A request that the State Soil and Water Conservation Committee duly define the boundaries for such district; that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in such territory; and that the committee determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the State Soil and Water Conservation Committee may consolidate all or any such petitions.

HISTORY: Codes, 1942, § 4944; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 5, eff from and after January 1, 1969.

Editor's Notes — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-17. Soil and water conservation districts; hearing and determination of necessity therefor.

Within sixty (60) days after a petition pursuant to Section 69-27-15 has been filed with the State Soil and Water Conservation Committee, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity in the interest of public health, safety, and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this article, and upon all questions relevant to such inquiries. All owners and all operators of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district, and such further hearing held. After such hearing, if the committee shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determination and in defining such boundaries, the committee shall give due weight and consideration to the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing water and land use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefit such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil and water conservation districts already organized or proposed for organization under the provisions of this article, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determinations set forth in Section 69-27-3. The territory to be included within such boundaries need not be contiguous. If the committee shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After twelve (12) months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon. If it be determined that there is no need for such soil and water conservation district, then in no event shall any expense or part thereof, incurred in connection with the hearing or other proceedings had to determine such question, be assessed against any landowner or other party except those landowners signing the original petition.

HISTORY: Codes, 1942, § 4944; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 5, eff from and after January 1, 1969.

Editor's Notes — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-19. Soil and water conservation districts; referendum; commission to pay expenses.

(1) After the committee has made and recorded a determination that there is need, in the interest of public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil and water conservation districts in this article is administratively practicable and feasible. To assist the committee in the determination of such administrative practicability and feasibility, it shall be the duty of the committee, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district, and to cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "for creation of a soil and water conservation district of the lands below described and lying in the county(ies) of ________ and ________," and "against creation of a soil and water conservation district of the lands below described and lying in the county(ies) of ________ and ________," shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the

other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the committee. All owners of lands lying within the boundaries of the territory, as determined by the state soil and water conservation committee, shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote.

(2) The committee shall pay expenses for the issuance of such notices and the conduct of such hearings and referendums as hereinabove provided for and shall supervise the conduct of such hearings and referendums. It shall issue appropriate regulations governing the conduct of such hearings and referendums, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the results thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

HISTORY: Codes, 1942, § 4944; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 5, eff from and after January 1, 1969.

Editor's Notes — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-21. Results of referendum; determination of district's administrative feasibility.

The committee shall publish the results of a referendum held pursuant to the provisions of this article and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the committee shall give due regard and weight to the attitude of the owners and operators of lands lying within the defined boundaries, the number of landowners eligible to vote in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the landowners of the proposed district, the probable expenses of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determinations set forth in Section 69-27-3, but the committee shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district. In the event a majority of the votes cast in the referendum shall not have been cast in favor of the creation of such district, then in no event shall any of the expenses incident to the conduct of the referendum, investigation or other proceedings had in connection therewith be assessed against any party other than such parties as signed the original petition.

HISTORY: Codes, 1942, § 4944; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 5, eff from and after January 1, 1969.

Editor's Notes — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-23. Organization of soil and water conservation district; procedure; certificate of due organization.

(1) If the committee shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two (2) commissioners to act, with the three (3) commissioners elected as provided hereinafter, as the governing body of the district. Such district shall be a governmental subdivision of this state and a public body, corporate and politic, upon the taking of the following proceedings:

The two (2) appointed commissioners shall present to the Secretary of State an application signed by them, which shall set forth (and such application need contain no detail other than the mere recitals): (a) that a petition for the creation of the district was filed with the State Soil and Water Conservation Committee pursuant to the provisions of this article, and that the proceedings specified in this article were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this article; and that the committee has appointed them as commissioners; (b) the name and official residence of each of the commissioners, together with a certified copy of the appointments evidencing their right to office; (c) the term of office of each of the commissioners; (d) the name which is proposed for the district; and (e) the location of the principal office of the commissioners of the district. The application shall be subscribed and sworn to by each of the said commissioners before an officer authorized by the laws of this state to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the State Soil and Water Conservation Committee, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid; that the committee did duly determine that there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the committee did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the committee.

The Secretary of State shall examine the application and statement, and, if he finds that the name proposed for the district is not identical with that of any other soil and water conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the Secretary of State shall find that the name proposed for the district is identical with that of any other soil and water conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the State Soil and Water Conservation Committee, which shall thereupon submit to the Secretary of State a new name for said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the Secretary of State shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed and recorded, as herein provided, the district shall constitute a governmental subdivision of this state and a public body, corporate and politic. The Secretary of State shall make and issue to the said commissioners a certificate, under the seal of the state, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the State Soil and Water Conservation Committee as aforesaid, but in no event shall they include any area included within the boundaries of another soil and water conservation district organized under the provisions of this article.

(2) In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding, or action of the district, the district shall be deemed to have been established in accordance with the provisions of the aforesaid sections upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate duly certified by the Secretary of State shall be admissible in evidence in any such action or proceeding and shall be proof of the filing and contents thereof. However, the procedural steps required for the issuance of a certificate by the Secretary of State may be attacked in any suit or proceeding involving the validity or enforcement of or relating to any contract, proceeding, or action of the district.

HISTORY: Codes, 1942, § 4944; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 5, eff from and after January 1, 1969.

Editor's Notes — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

OPINIONS OF THE ATTORNEY GENERAL

The two appointed members of a county soil and water conservation board have the same authority as the three elected members. Ladner, Mar. 10, 2006, A.G. Op. 06-0004.

The appointed commissioners of a county soil and water conservation district do not have a vote in appointments of successors. Ladner, Mar. 10, 2006, A.G. Op. 06-0004.

The commissioners, by majority vote, may delegate to the chairman and/or other commissioners, agents or employees, including the appointed commissioners, the power and authority to sign checks on behalf of a county soil and water conservation district. Ladner, Mar. 10, 2006, A.G. Op. 06-0004.

§ 69-27-24. Authority of municipalities to contribute to soil conservation districts.

(1) The governing authorities of an incorporated municipality within this state are authorized and empowered, in their discretion, to make contributions to the various soil conservation districts either now or hereafter located entirely or partially within the county in which the municipality is situated.

(2) This section is intended to be cumulative and not to repeal or limit or abridge any laws in this state which provide for assistance to soil conservation districts.

HISTORY: Laws, 1991, ch. 310, § 1, eff from and after July 1, 1991.

Cross References — Authority of counties to contribute to soil conservation districts, see § 69-27-67.

§ 69-27-25. Subsequent petitions may be filed twelve months after the negative determination.

After twelve (12) months shall have expired from the date of entry of a determination by the State Soil and Water Conservation Committee that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this article.

HISTORY: Codes, 1942, § 4944; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 5, eff from and after January 1, 1969.

Editor's Notes — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-27. Inclusion of additional territory within existing district.

Petitions for including additional territory within an existing district may be filed with the State Soil and Water Conservation Committee, and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion. The committee shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this article for petitions to organize a district. Where the total number of landowners in the area proposed for inclusion shall be less than twenty-five (25), the petition may be filed when signed by a majority of the owners of such area, and in such cases no referendum need be held. In referendums upon petitions for such inclusion, only owners of land lying within the proposed additional area shall be eligible to vote.

HISTORY: Codes, 1942, § 4944; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 5, eff from and after January 1, 1969.

Editor's Notes — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-29. Cities and towns, etc., to be included within district.

All cities, towns, villages or other urban or suburban areas lying within the boundaries of a soil and water conservation district established pursuant to the provisions of the state soil and water conservation district law, as amended, with the approval of the governing authorities of said cities, towns or villages, shall be included in and deemed a part of the district.

HISTORY: Codes, 1942, § 4944; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 5, eff from and after January 1, 1969.

§ 69-27-31. Election of three commissioners for each district.

Within thirty (30) days after the date of issuance by the Secretary of State of a certificate of organization of a soil and water conservation district, nominating petitions may be filed with the State Soil and Water Conservation Committee to nominate candidates for commissioners of such district. The committee shall have authority to extend the time within which nominating petitions may be filed. No such nominating petition shall be accepted by the committee unless it shall be subscribed by twenty-five (25) or more owners of lands lying within the boundaries of such district. Landowners may sign more than one such nominating petition to nominate more than one candidate for commissioner but in no event shall a landowner sign more than three (3) such nominating petitions. The committee is hereby authorized to enact and implement rules to provide that not more than one commissioner shall be a resident of any one county or supervisors district, unless there is no person qualified and willing to serve in another county or supervisors district. The committee shall give due notice of an election to be held for the election of three (3) commissioners for the district. The names of all nominees, on behalf of whom such nominating petitions have been filed within the time herein designated, shall appear, arranged in alphabetical order of the surnames, upon ballots, with a square before each name and a direction to insert an X mark in the square before any three (3) names to indicate the voter's preference. All owners of lands lying within the district shall be eligible to vote in such election. Only such landowners shall be eligible to vote. The three (3) candidates who receive a majority of the votes cast in such an election shall be elected commissioners for such district. In the event any candidate fails to receive a majority, then the candidates receiving the largest number of votes shall run off in an election to be held two (2) weeks thereafter. The committee shall pay all the expenses of such elections, shall supervise conduct thereof, shall prescribe regulations governing the conduct of such election and the determination of the eligibility of voters therein, and shall publish the results of same.

HISTORY: Codes, 1942, § 4945; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 6, eff from and after January 1, 1969.

Editor's Notes — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-33. Appointment, qualifications, and tenure of commissioners.

The governing body of the district shall consist of five (5) commissioners, elected or appointed as provided hereinabove. The commissioners shall be persons who are landowners and/or operators within the geographical areas of the district qualified to perform the specialized skilled services which will be required of them in the performance of their duties hereunder, and able to attend all meetings.

The commissioners shall designate a chairman annually. The term of office of each commissioner shall be three (3) years, except that the commissioners who are first appointed shall be designated to serve for terms of one (1) and two (2) years, respectively, from the date of their appointment. A commissioner shall hold office until his successor has been elected or appointed and has qualified. Vacancies shall be filled by election or appointment as in the case of the election or appointment of other commissioners, but in the event the unexpired terms remaining of the offices vacated are less than one (1) year, said vacancy shall be filled for the unexpired term by the other commissioners. The selection of successors for a full term shall be made in the same manner in which the original retiring commissioners shall, respectively, have been selected. A majority of the commissioners shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A commissioner and any deputy commissioner shall receive no compensation for their services, but they shall be entitled to expenses, including travelling expenses, necessarily incurred in the discharge of their duties.

The commissioners may utilize the services of the county agricultural agents and the facilities of the county agricultural agents' offices insofar as practicable and feasible, and may, with the approval of the State Soil and Water Conservation Commission employ such other help as may be necessary.

Employees hired pursuant to this section, upon agreement by the commissioners and the county board of supervisors, shall be considered as employees of the county or counties in which the district is located solely for the purpose of allowing such county or counties to include these employees in any group life and/or health insurance or workers' compensation insurance program maintained by the county or counties for its employees and to include these employees in the county payroll system. Upon such agreement, the county or counties shall be responsible for the payment and withholding functions for the commissioners and shall provide the employees with all required tax documents. If more than one (1) county desires to include these employees in a group life and/or health insurance or workers' compensation insurance program, the counties shall determine the program in which the employees shall be included and the amount of contributions that the other county or counties shall make to that program on behalf of the employees. Nothing in this section shall be construed to mean that these employees are to be considered as county employees for any purpose other than the purpose of including these employees in a county employee group life and/or health insurance or workers' compensation insurance program and the county's payroll system. The commissioners may call upon the Attorney General of the state for such legal services as they may require, or may use such other legal counsel as may be available. The commissioners may delegate to their chairman, to one or more commissioners, or to one or more agents, or employees, such powers and duties as they may deem proper, and may appoint such deputy commissioners as they deem appropriate, not to exceed one (1) deputy commissioner for each supervisor district in the soil and water conservation district, to assist the commissioners in the performance of their duties; however, deputy commissioners shall not be entitled to vote on any matter coming before the commissioners. The State Soil and Water Conservation Commission shall establish and administer qualification standards and establish term of office for deputy commissioners. The commissioners shall furnish to the State Soil and Water Conservation Commission, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this article.

The commissioners may provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements if total annual receipts or expenditures exceeds Sixty Thousand Dollars ($60,000.00) and an annual financial statement if total annual receipts or expenditures is equal to or less than Sixty Thousand Dollars ($60,000.00).

The commissioners may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the commissioners of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

HISTORY: Codes, 1942, § 4946; Laws, 1938, ch. 253; Laws, 1962, ch. 170; Laws, 1968, ch. 246, § 7; Laws, 1986, ch. 488, § 9; Laws, 1989, ch. 490, § 1; Laws, 1990, ch. 461, § 1; Laws, 1991, ch. 332, § 1; Laws, 1997, ch. 310, § 1, eff from and after July 1, 1997; Laws, 1999, ch. 413, § 1, eff from and after July 1, 1999.

OPINIONS OF THE ATTORNEY GENERAL

A county is not responsible for paying the costs of life, health and workers' compensation insurance premiums, matching social security and medicare, retirement benefits, and like expenses for soil and water conservation district employees. Barefield, Feb. 13, 2004, A.G. Op. 03-0069.

The appointed commissioners of a county soil and water conservation district do not have a vote in appointments of successors. Ladner, Mar. 10, 2006, A.G. Op. 06-0004.

There is no statutory requirement that a commissioner of a county soil and water conservation district be a resident of or represent a particular county supervisor district. Ladner, Mar. 10, 2006, A.G. Op. 06-0004.

§ 69-27-35. Powers of districts and commissioners.

A soil and water conservation district organized under the provisions of this article shall constitute a governmental subdivision of this state, and a public body, corporate and politic, exercising public powers, and such district and the commissioners thereof shall have the following powers, in addition to others granted in other sections of this article:

(a) To conduct surveys, investigations and research relating to the character of soil erosion and the preventive and control measures needed, to publish results of such surveys, investigations or research, and to disseminate information concerning such preventive and control measures. However, in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies.

(b) To conduct demonstration projects within the district on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which water and soil resources may be conserved, and soil erosion in the form of soil washing may be prevented and controlled.

(c) To carry out preventive and control measures within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection (c), Section 69-27-3, on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner of such lands.

(d) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any owner or operator of lands within the district, in the carrying on of erosion control and prevention operations within the district, subject to such conditions as the commissioners may deem necessary to advance the purposes of this article.

(e) To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, or devise, any property, real or personal, or rights or interests therein, and all such property shall be exempt from state, county, or municipal taxation; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this article; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this article. Notwithstanding any provisions of general law to the contrary, no land or interest therein described under this subsection shall be acquired for recreational purposes by eminent domain proceedings after January 1, 1969.

(f) To make available, on such terms as it shall prescribe, to landowners and operators within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings, and such other material or equipment, as will assist such landowners and operators to carry on operations upon their lands for the conservation of soil and water resources and for the prevention and control of soil erosion, and to purchase comprehensive insurance on such agricultural and engineering equipment.

(g) To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this article, with the consent of two-thirds (⅔) of the landowners owning sixty-six and two-thirds percent (66-⅔%) of all lands affected, whether the owners of such land live within such district or not.

(h) To develop comprehensive plans for the conservation of soil and water resources and for the control and prevention of soil erosion within the district, and to bring such plans and information to the attention of owners and operators of lands within the district.

(i) To acquire by purchase or lease, and to administer, any water and soil conservation, erosion-control or erosion-prevention project located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage as agent of the United States or any of its agencies, or of this state or any of its agencies, any water and soil conservation, erosion-control or erosion-prevention project within its boundaries; to act as agent for the United States or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil and water conservation, erosion-control or erosion-prevention project within its boundaries; to accept donations, gifts and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, or from private sources, and to use or expend such monies, services, materials, or other contributions in carrying on its operations.

(j) To assist individual landowners or operators and organized groups, associations, or other agencies or units of government to plan and establish recreational facilities for family use, income-producing purposes, or for community access.

(k) To enter into contracts with the approval of the Governor with any agency of the federal or state government or its political subdivisions to accomplish the objectives of this article.

(*l*) To collect cost-sharing funds, and to establish and implement procedures compatible with the purposes of this article for the necessary financing of water and soil conservation district activities, including the administration of any federal funds made available for the use of the district.

(m) To receive and expend funds or monies or other assets from any state or federal agency or any other source, public or private, in furtherance of the purposes of this article.

(n) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal rules and regulations not inconsistent with this article, to carry into effect its purposes and powers.

(o) As a condition to the extending of any benefits under this article to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the commissioners may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require landowners and operators to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

(p) No provision with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the Legislature shall specifically so state.

HISTORY: Codes, 1942, § 4947; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 8; Laws, 1972, ch. 437, § 2; Laws, 1997, ch. 309, § 1, eff from and after July 1, 1997.

Cross References — Duty of local soil and water commissioners to make survey of surface mining operations, see § 53-7-9.

Authority of governing authorities of municipalities to contribute to soil conservation districts, see § 69-27-24.

Power of commissioners to appoint deputy commissioners, see § 69-27-33.

OPINIONS OF THE ATTORNEY GENERAL

A county and a soil and water conservation district had the authority to contract to develop and implement various projects related to water management and the conservation of soil and water resources and the control and prevention of soil erosion, without the necessity of an interlocal agreement. Dulaney, February 12, 1999, A.G. Op. #99-0029.

The Tunica County Soil and Water Conservation District is authorized to implement a beaver control program as a "preventive and control measure" under Miss. Code Ann. § 69-27-35(c). County boards of supervisors are authorized to expend public funds to eradicate and control beaver populations. Dulaney, March 23, 2007, A.G. Op. #07-00150, 2007 Miss. AG LEXIS 62.

§ 69-27-37. Adoption of land-use regulations.

The commissioners of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving water and soil and soil resources and preventing and controlling soil erosion subject to the approval of and acceptance by two-thirds (⅔) of the landowners owning at least sixty-six and two-thirds per cent (66⅔) of the lands affected by such proposed regulations. Such regulations shall be compatible with state laws, particularly those related to the board of water commissioners.

The commissioners may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The commissioners shall not have authority to enact such water and land use regulations into law until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the owners of lands lying within the boundaries of the district for their indication of approval or disapproval of such proposed regulations, and until after the commissioners have considered the result of such referendum. The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum. The notices of the referendum shall recite the contents of such proposed ordinance, or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots, upon which the words "for approval of proposed ordinance No. ________, prescribing land and water use regulations for conservation of soil and water and prevention of erosion" and "against approval of proposed ordinance No. ________, prescribing water and land use regulations for conservation of soil and water and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance. The commissioners shall supervise such referendum, shall prescribe appropriate regulations governing the conduct thereof, and shall publish the result thereof. All owners of land within the district shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The commissioners shall not have authority to enact such proposed ordinance into law unless two-thirds (⅔) of the landowners owning at least sixty-six and two-thirds per cent (66⅔%) of all lands affected by such proposed ordinance shall have voted in favor thereof. The approval of the proposed ordinance by two-thirds (⅔) of the landowners owning at least sixty-six and two-thirds per cent (66⅔%) of the land affected by such ordinance shall not be deemed to require the commissioners to enact such proposed ordinance into law. Water and land use regulations prescribed in ordinances adopted pursuant to the provisions of this section by the commissioners of any district shall have the force and effect of law in the said district.

Any owners or operators of land within such district may at any time file a petition with the commissioners asking that any or all of the water and land use regulations prescribed in any ordinance adopted by the commissioners under the provisions of this section shall be amended, supplemented or repealed. Water and land use regulations prescribed in any ordinance adopted pursuant to the provisions of this section shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in this section for adoption of water and land use regulations. Referendums on adoption, amendment, supplementation, or repeal of water and land use regulations shall not be held more often than once in twelve (12) months.

The regulations to be adopted by the commissioners under the provisions of this section may include:

(a) Provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures.

(b) Provisions requiring observance of particular methods of cultivation, including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water conserving and erosion-preventing plants, trees, and grasses, afforestation, and reforestation.

(c) Specifications of cropping programs and tillage practices to be observed.

(d) Provisions requiring the retirement from cultivation of highly erodible areas or of areas on which erosion may not be adequately controlled if cultivation is carried on.

(e) Provisions for such other means, measures, operations, and programs as may assist conservation of water and soil resources and prevent or control soil erosion in the district having due regard to the legislative findings set forth in Section 69-27-3.

The regulations shall be uniform throughout the territory comprised within the district except that the commissioners may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of water and land use regulations adopted under the provisions of this section shall be made available to all owners and operators of lands lying within the district.

HISTORY: Codes, 1942, § 4948; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 9, eff from and after January 1, 1969.

Cross References — Preparation of plans for developing state, see §§ 57-1-1 et seq.

§ 69-27-39. Enforcement of land-use regulations.

The commissioners shall have authority to go upon any lands within the district to determine whether land-use regulations adopted under the provisions of Section 69-27-37 are being observed. The commissioners are further authorized to provide by ordinance that any landowner or operator who shall sustain damages from any violation of such regulations by any other landowner or operator may recover damages at law from such other landowner or operator for such violation.

HISTORY: Codes, 1942, § 4949; Laws, 1938, ch. 253.

§ 69-27-41. Performance of work under the regulations by the commissioners.

Where the commissioners of any district shall find that any of the provisions of land-use regulations prescribed in an ordinance adopted in accordance with the provisions of Section 69-27-37 are not being observed on particular lands, and that such violations are the proximate cause of damage to any other landowner within the district, then the commissioners may present to the chancery court of the county in which the lands of the defendant may lie a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant landowner or operator or both to observe such regulations, and to perform particular work, operations or avoidance as required thereby and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district and is the proximate cause of damage to other landowners within the district, and praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform the commissioners may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations and recover the costs and expenses thereof from the defendant. Upon the filing of such petition, process shall issue against the defendant returnable in the manner provided by law, and said cause shall be tried in the manner provided by law for the trial of civil actions. The defendant may demand a trial by jury and in such event, the jurors shall have the qualifications of jurors in eminent domain proceedings in the chancery court. If the decree of the court be against the defendant, the court may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the commissioners may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such lands into conformity with the requirements of the regulations and may recover the costs and expenses thereof, from the defendant. In no case, however, shall the commissioners enter upon such lands for such purpose until the court shall have found that the landowner or person in possession has not prosecuted such work as was ordered by the court with reasonable diligence. In all cases where the person in possession of lands who shall fail to perform such work, operations, or avoidances shall not be the owner, the owner of such lands shall be joined as party defendant.

The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court, the commissioners may file a petition with the court, a copy of which shall be served upon the defendant in the case, in the manner provided by law for service of process, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor. The court shall have jurisdiction to enter, upon a hearing to be held not sooner than five days after service of such process, its decree for the amount of such costs and expenses together with the costs of suit, including a reasonable attorney's fee to be fixed by the court. Such decree shall when entered upon the lis pendens docket of said court, constitute a lien on the lands of the defendant.

HISTORY: Codes, 1942, § 4950; Laws, 1938, ch. 253.

RESEARCH REFERENCES

ALR.

Validity of statute allowing attorneys' fees to successful claimant but not to defendant, or vice versa. 73 A.L.R.3d 515.

§ 69-27-43. Board of adjustment; members; expenses.

Where the commissioners of any district organized under the provisions of this article shall adopt an ordinance prescribing land-use regulations in accordance with the provisions of Section 69-27-37, they shall further provide by ordinance for the establishment of a board of adjustment. Such board of adjustment shall consist of three (3) members, each to be appointed for a term of three (3) years, except that the members first appointed shall be appointed for terms of one (1), two (2), and three (3) years, respectively. The members of each such board of adjustment shall be appointed by the State Soil and Water Conservation Committee, and shall be removable, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason, such hearing to be conducted jointly by the State Soil and Water Conservation Committee and the commissioners of the district. Vacancies in the board of adjustment shall be filled in the same manner as original appointments, and shall be for the unexpired term of the member whose term becomes vacant. Members of the State Soil and Water Conservation Committee and the commissioners of the district shall be ineligible to appointment as members of the board of adjustment during their tenure of such other office. The members of the board of adjustment shall receive no compensation for their services but shall be entitled to expenses, including travelling expenses, necessarily incurred in the discharge of their duties. The commissioners shall pay the necessary administrative and other expenses of operation incurred by the board, upon the certificate of the chairman of the board.

HISTORY: Codes, 1942, § 4951; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 10, eff from and after January 1, 1969.

Editor's Notes — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-45. Board of adjustment; procedure; meetings; records.

The board of adjustment shall adopt rules to govern its procedure, which rules shall be in accordance with the provisions of this article, and with the provisions of any ordinance adopted pursuant to Sections 69-27-43 through 69-27-49. The board shall designate a chairman from among its members, and may, from time to time, change such designation. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two (2) members of the board shall constitute a quorum. The chairman, or in his absence such other member of the board as he may designate to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record.

HISTORY: Codes, 1942, § 4951; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 10, eff from and after January 1, 1969.

§ 69-27-47. Board of adjustment; hearing on land use regulations.

Any landowner or operator may file a petition with the board of adjustment alleging that there are great practical difficulties or unnecessary hardships in the way of his carrying out upon his lands the strict letter of the land-use regulations prescribed by ordinance approved by the commissioners, and praying the board to authorize a variance from the terms of the land-use regulations in the application of such regulations to the lands owned or operated by the petitioner. Copies of such petition shall be served by the petitioner upon the chairman of the commissioners of the district within which his lands are located and upon the chairman of the State Soil and Water Conservation Committee. The board of adjustment shall fix a time for the hearing of the petition and cause due notice of such hearing to be given. The commissioners of the district and the State Soil and Water Conservation Committee shall have the right to appear and be heard at such hearing. Any owner or operator of lands lying within the district who shall object to the authorizing of the variance prayed for may intervene and become a party to the proceedings. Any party to the hearing before the board may appear in person, by agent, or by attorney. If, upon the facts presented at such hearing, the board shall determine that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record such determination and shall make and record findings of fact as to the specific conditions which establish such great practical difficulties or unnecessary hardship. Upon the basis of such findings and determination, the board shall have power by order to authorize such variance from the terms of land-use regulations in their application to the lands of the petitioner, as will relieve such great practical difficulties or unnecessary hardship and will not be contrary to the public interest, and such that the spirit of the land-use regulations shall be observed, the public health, safety, and welfare secured, and substantial justice done.

HISTORY: Codes, 1942, § 4951; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 10, eff from and after January 1, 1969.

Editor's Notes — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-49. Appeal from order of board of adjustment.

Any petitioner aggrieved by an order of the board granting or denying, in whole or in part, the relief sought, the commissioners of the district, or any intervening party, may obtain a review of such order in the chancery court of the county in which the lands of the petitioner may lie, by filing in such court a petition praying that the order of the board be modified or set aside and may demand a jury qualified in all respects as the jurors in eminent domain proceedings in the chancery court. A copy of such petition shall forthwith be served upon the parties to the hearing before the board and thereupon the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board, including the documents and testimony upon which the order complained of was entered, and the findings, determination, and order of the board. Upon such filing, the court shall cause notice thereof to be served upon the parties and shall have jurisdiction of the proceedings and of the questions determined or to be determined therein, and shall have power to grant such temporary relief as it deems just and proper, and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the board. No contention that has not been urged before the board shall be considered by the court unless the failure or neglect to urge such contention shall be excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, shall be conclusive. If any party shall apply to the court for leave to produce additional evidence and shall show to the satisfaction of the court that such evidence is material and that there were reasonable grounds for the failure to produce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the transcript. The board may modify the findings as to the facts or make new findings, taking into consideration the additional evidence so taken and filed, and it shall file such modified or new findings which, if supported by evidence, shall be conclusive, and shall file with the court its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review in the same manner as are other judgments or decrees of the court.

HISTORY: Codes, 1942, § 4951; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 10, eff from and after January 1, 1969.

§ 69-27-51. Cooperation between districts.

The commissioners of any two or more districts organized under the provisions of this article may cooperate with one another in the exercise of any or all powers conferred in this article.

HISTORY: Codes, 1942, § 4952; Laws, 1938, ch. 253.

JUDICIAL DECISIONS

1. In general.

Office of committeeman on an executive committee elected upon agreement of two conservation districts to co-operate is a public office within the general rule that injunction will not lie to try the right and title to a public office. Lacey v. Noblin, 238 Miss. 329, 118 So. 2d 336, 1960 Miss. LEXIS 409 (Miss. 1960).

In an injunction action by one claiming to have been elected as a member of an executive committee created upon agreement of two conservation districts to co-operate, and alleging that the other defendants had refused to permit him to perform his duties and had attempted to substitute another in his place, since the allegations reflected that one other than complainant was in possession of the office and performing the duties thereof, complainant did not bring himself within the exception to the general rule that a bill for injunction will not lie to try the right and title to a public office. Lacey v. Noblin, 238 Miss. 329, 118 So. 2d 336, 1960 Miss. LEXIS 409 (Miss. 1960).

§ 69-27-53. State agencies to cooperate.

Agencies of this state which shall have jurisdiction over, or be charged with the administration of, any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district organized hereunder, shall cooperate to the fullest extent with the commissioners of such districts in the effectuation of programs and operations undertaken by the commissioners under the provisions of this article. The commissioners of such districts shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land-use regulations adopted pursuant to Section 69-27-37, shall have the force and effect of law over all such publicly owned lands, and shall be in all respects observed by the agencies administering such lands.

HISTORY: Codes, 1942, § 4953; Laws, 1938, ch. 253.

Cross References — Duties and powers of Secretary of State, see § 7-11-11.
Contributions of land to soil conservation districts by counties, see § 69-27-67.

§ 69-27-55. Adjustment of boundaries or withdrawal of lands from district; consolidation with another district; petition.

Any twenty-five (25) owners of land lying within the limits of a portion of a soil and water conservation district organized under the provisions of this article may petition the State Soil and Water Conservation Committee asking that the described area be withdrawn from the present district, or that the district be dissolved, and consolidated with another district or segment of another district, and that the area withdraw or the composite area be designated as an individual soil and water conservation district, with all the powers and responsibilities designated to soil and water conservation districts by law. Such petition shall set forth:

(a) The proposed name of such district.

(b) That there is a need for adjustment of boundaries or reorganization of territory, to provide for a separate soil and water conservation district to function in the territory described in the petition, in the interest of public health, safety, and welfare.

(c) A description of the territory proposed to be included in the adjusted boundaries, or the territory to be withdrawn from an existing district, and the total territory to be included in the new district.

(d) A request that the State Soil and Water Conservation Committee duly define the boundaries for such district; that one or more public hearings be held to determine the feasibility and propriety of such changes; and that the committee determine that such adjustments be made or such district created.

Where more than one petition is filed covering parts of the same territory, the State Soil and Water Conservation Committee may consolidate all or any such petitions.

HISTORY: Codes, 1942, § 4954.5; Laws, 1968, ch. 246, § 12, eff from and after January 1, 1969.

Editor's Notes — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-57. Adjustment or consolidation; hearing and determination of administrative feasibility.

(1) Within sixty (60) days after a petition pursuant to Section 69-27-55 has been filed with the State Soil and Water Conservation Committee, it shall cause due notice to be given of one or more proposed hearings upon the question of the desirability and necessity in the interest of the public health, safety, and welfare, of the adjustment of the boundaries or creation of such district, upon the question of appropriate boundaries of such district, upon the

propriety of the petition and other proceedings taken under this article, and upon all questions relevant to such inquiries. All owners and operators of land within the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all owners and all operators of land within the existing district or districts from which territory is being considered for withdrawal, and all other interested parties, shall have the right to attend such hearings and be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed adjusted boundary or within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area to be considered and such further hearing held.

(2) After such hearing or hearings, if the committee shall determine, upon the facts presented at such hearings and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety, and welfare, for adjustment in the boundaries, or for withdrawing territory from an existing district for the purpose of combination with other territory or district to provide an opportunity for more effective functioning of one or more districts in the territory considered at the hearings, it shall have the power to and shall make and record such determination, and shall define, by metes and bounds, or by legal subdivisions, the boundaries of such adjusted territory, or the boundaries of such district or districts. In making such determination and in defining such boundaries, the committee shall give due weight and consideration to the topography of the area considered, the composition of the soils, the distribution of erosion, the prevailing water and land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefit such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil and water conservation districts already organized or proposed to be organized under the provisions of this article, the relationship to existing political subdivisions of the state, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determinations set forth by law.

(3) If the committee shall determine after such hearings, after due consideration of the said relevant facts, that there is no need for the adjustment in boundary, or the revision of districts in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After twelve (12) months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.

(4) The committee shall pay all expenses for the issuance of such notices and the conduct of such hearings as are deemed necessary by the committee. The committee shall supervise the conduct of all hearings provided pursuant to the provisions of this article. It shall issue appropriate regulations governing the conduct of such hearings.

(5) If the committee has decided that the adjustment of boundaries or revision of districts is needed, as provided in subsection (2) of this section, it shall have the power to make the determination, upon the facts presented at such hearings, and upon such other relevant facts and information as may be available, that the operation of a district with the adjusted boundaries, or as revised or consolidated within the defined boundaries, is administratively practicable and feasible. If the committee shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the operation of a district within the described boundaries is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner provided in Sections 69-27-15 through 69-27-29, except that a referendum as provided therein shall not be deemed necessary, a hearing or hearings being substituted therefor.

(6) After twelve (12) months shall have expired from the date of entry of a determination by the State Soil and Water Conservation Committee that operation of a district within the adjusted boundary or revised territory is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as provided in subsection (3) of this section and action taken thereon in accordance with the provisions of Sections 69-27-55 through 69-27-61.

HISTORY: Codes, 1942, § 4954.5; Laws, 1968, ch. 246, § 12, eff from and after January 1, 1969.

Editor's Notes — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-59. Adjustment or consolidation; applicability and interpretation of certain provisions.

(1) All statutory provisions pertaining to the qualifications, appointment, election, and tenure of commissioners, and the powers of districts and commissioners shall apply to districts whose boundaries are revised or which are reconstituted under Sections 69-27-55 through 69-27-61.

(2) The provisions of Sections 69-27-55 through 69-27-61 shall not be interpreted to remove from office commissioners previously appointed or elected to serve existing soil and water conservation districts. However, the State Soil and Water Conservation Committee is empowered to establish rules whereby these officers will continue to serve, either in the existing district, or in the newly constituted district, until the termination date of their present term of office.

HISTORY: Codes, 1942, § 4954.5; Laws, 1968, ch. 246, § 12, eff from and after January 1, 1969.

Editor's Notes — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-61. Adjustment or consolidation; division of assets.

The State Soil and Water Conservation Committee shall determine from each existing soil and water conservation district from which territory may be withdrawn in the adjustment of boundaries, or revision of a district, the value of cash or bonds on hand, and shall also make an appraisal of the cash value of the equipment, land, or other property of these affected districts, on hand as of the date of issuance of the certificate of organization by the Secretary of State to the revised district, and shall divide the liquid assets on the basis of the proportion of territory withdrawn from the existing district to the total territory in the existing district, make equitable distribution of the equipment, and partition any real property. The decision of the State Soil and Water Conservation Committee in this division of assets shall be final.

HISTORY: Codes, 1942, § 4954.5; Laws, 1968, ch. 246, § 12, eff from and after January 1, 1969.

Editor's Notes — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-63. Discontinuance of districts.

At any time after the organization of a district under the provisions of this article, any twenty-five (25) owners of land lying within the boundaries of such district may file a petition with the State Soil and Water Conservation Committee praying that the operations of the district be terminated and the existence of the district discontinued. The committee may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within sixty (60) days after such a petition has been received by the committee, it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the ________ (name of the soil and water conservation district to be here inserted)" and "Against terminating the existence of the ________ (name of the soil and water conservation district to be here inserted)" shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All owners of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate such referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The committee shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the commissioners of the district. In making such determination the committee shall give due regard and weight to the attitudes of the owners and operators of lands lying within the district, the number of landowners eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance in the district to the total number of votes cast, the approximate wealth and income of the landowners of the district, the probable expense of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in Section 69-27-3. However, the committee shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the State Soil and Water Conservation Committee of a certification that the committee has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the commissioners shall forthwith proceed to terminate the affairs of the district. The commissioners shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the state treasury. The commissioners shall thereupon file an application, duly verified, with the Secretary of State for the discontinuance of such district, and shall transmit with such application the certificate of the State Soil and Water Conservation Committee setting forth the determination of the committee that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The Secretary of State shall issue to the commissioners a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon the issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such district shall be of no further force and effect. All contracts theretofore entered into, to which the district or commissioners are parties, shall remain in full force and effect for the period provided in such contracts. The State Soil and Water Conservation Committee shall be substituted for the district or commissioners as party to such contracts. The committee shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise as the commissioners of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of Section 69-27-41, nor the pendency of any action instituted under the provisions of such section, and the committee shall succeed to all the rights and obligations of the district or commissioners as to such liens and actions.

The State Soil and Water Conservation Committee shall not entertain petition for the discontinuance of any district nor conduct referendums upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this section, more often than once in one (1) year.

In the event a majority of the landowners vote to dissolve a district the State Soil and Water Conservation Committee shall dissolve same.

HISTORY: Codes, 1942, § 4954; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 11, eff from and after January 1, 1969.

Editor's Notes — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-65. Certain counties authorized to lease road machinery for soil conservation work.

(1) In order to assist in carrying out the objectives set forth in this article, the board of supervisors of Adams, Attala, Benton, Carroll, Chickasaw, Claiborne, Clarke, Clay, Copiah, Covington, Forrest, Franklin, George, Greene, Grenada, Hancock, Harrison, Hinds, Holmes, Jasper, Jefferson, Jefferson Davis, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Pike, Rankin, Scott, Simpson, Stone, Union, Walthall, Warren, Wayne, Webster, Winston, Yalobusha and Yazoo counties of the State of Mississippi are hereby authorized, in their discretion, to lease to any soil conservation district of said respective counties, as authorized in this article, any road machinery belonging to the respective counties upon reasonable terms to be agreed upon, by contract between such board and such district, entered on the minutes of the board of supervisors making the lease.

(2) Be it further provided that if no soil conservation district exists within the county that the boards of supervisors of such counties may lease, as provided in subsection (1) of this section, road machinery belonging to the county to agricultural associations organized under the provisions of Sections 79-17-1 through 79-17-39, Mississippi Code of 1972, under the same terms and conditions as specified hereinabove for lease to soil conservation districts.

HISTORY: Codes, 1942, § 4958; Laws, 1938, Ex. ch. 63.

§ 69-27-67. Counties may contribute to soil conservation districts.

(1) The board of supervisors of any county is authorized and empowered, in its discretion, to make contributions to the various soil conservation districts either now or hereafter located entirely or partially within such county, under the provisions of this article, or elsewhere in the laws of this state.

(2) This section is intended to be cumulative and not to repeal or limit or abridge any laws in this state which provide for assistance to soil conservation districts.

HISTORY: Codes, 1942, § 4958.5; Laws, 1956, ch. 186, §§ 1, 2.

Cross References — Authority of governing authorities of municipalities to contribute to soil conservation districts, see § 69-27-24.

OPINIONS OF THE ATTORNEY GENERAL

A county had statutory authority to appropriate and expend monies to a soil and water conservation district where the county had a local and private bill which created a special fund from gaming revenues, 40 percent of which could be expended, among other things, for the construction, support, or maintenance of public or nonprofit water and sewer systems, storm water drainage and flood prevention, public recreation uses, etc. Dulaney, February 12, 1999, A.G. Op. #99-0029.

A county is not responsible for paying the costs of life, health and workers' compensation insurance premiums, matching social security and medicare, retirement benefits, and like expenses for soil and water conservation district employees. Barefield, Feb. 13, 2004, A.G. Op. 03-0069.

The appropriate method for the transfer of funds to a Soil and Water Conservation District is a determination left to the discretion and judgment of the board of supervisors. Barefield, Feb. 13, 2004, A.G. Op. 03-0069.

§ 69-27-69. Controlling effect of article.

In so far as any of the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling.

HISTORY: Codes, 1942, § 4956; Laws, 1938, ch. 253.

ARTICLE 3.

FEDERAL AID PROJECTS.

Sec.

69-27-101. Mississippi State University of Agriculture and Applied Science to administer article.
69-27-103. Plan.
69-27-105. Federal grants.
69-27-107. Powers of university.
69-27-109. Agents.
69-27-111. Reports.
69-27-113. No liability on university.

§ 69-27-101. Mississippi State University of Agriculture and Applied Science to administer article.

In order to carry out the purposes of the Soil Conservation and Domestic Allotment Act enacted by the Congress of the United States, the Mississippi State University of Agriculture and Applied Science (hereinafter referred to as the "university") is hereby designated as the agency of the State of Mississippi to administer any state plan authorized by this article which shall be approved by the secretary of agriculture of the United States (hereinafter referred to as the "secretary of agriculture") for the State of Mississippi pursuant to the provisions of said Soil Conservation and Domestic Allotment Act.

HISTORY: Codes, 1942, § 4959; Laws, 1936, ch. 291.

Cross References — Authorization of Mississippi State University of Agriculture and Applied Science to engage in agricultural work, generally, see §§ 37-113-19 et seq.

Adoption of land use regulations, see § 69-27-37.

§ 69-27-103. Plan.

The university is hereby authorized, empowered and directed to formulate and submit to the Secretary of Agriculture, in conformity with the provisions of said Soil Conservation and Domestic Allotment Act, a state plan for each calendar year. It shall be the purpose of each such plan to promote such utilization of land and such farming practices as the university finds will tend, in conjunction with the operation of such other plans as may be approved for other states by the Secretary of Agriculture, to preserve and improve soil fertility, promote the economic use of land, diminish the exploitation and wasteful and unscientific use of natural soil resources, and reestablish and maintain the ratio between the purchasing power of the net income per person on farms and that of the income per person not on farms as defined in subsection (a) of Section 7 of said Soil Conservation and Domestic Allotment Act. Each such plan shall provide for adjustments in the utilization of land and in farming practices, through agreements with producers or through other voluntary methods, and for benefit payments in connection therewith, and also for such methods of administration not in conflict with any law of this state and such reports as the Secretary of Agriculture finds necessary for the effective administration of the plan and for ascertaining whether the plan is being carried out according to its terms.

HISTORY: Codes, 1942, § 4960; Laws, 1936, ch. 291.

Cross References — Authorization of Mississippi State University of Agriculture and Applied Science to engage in agricultural work, generally, see §§ 37-113-19 et seq.

Adoption of land use regulations, see § 69-27-37.

Federal Aspects— Subsection (a) of Section 7 of the Soil Conservation and Domestic Allotment Act is codified at 16 USCS § 590g.

§ 69-27-105. Federal grants.

Upon the acceptance by the Secretary of Agriculture of each such plan submitted pursuant to Section 69-27-103, the university is authorized and empowered to accept and receive all grants of money made pursuant to said Soil Conservation and Domestic Allotment Act for the purpose of enabling the state to carry out the provisions of such plan, and all such funds, together with any moneys which may be appropriated by the state for such purpose, shall be available to the university for expenditures necessary in carrying out the plan, including administrative expenses, expenditures in connection with educational programs in aid of the plan, and benefit payments.

HISTORY: Codes, 1942, § 4961; Laws, 1936, ch. 291.

§ 69-27-107. Powers of university.

In carrying out the provisions of each plan submitted pursuant to Section 69-27-103, and accepted by the Secretary of Agriculture, the university shall have power: to employ such agents or agencies, and to establish such agencies, as it may find to be necessary; to cooperate with local and state agencies and with agencies of other states and of the federal government; to conduct research and educational activities in connection with the formulation and operation of such plan; to enter into agreements with producers, and to provide by other voluntary methods, for adjustments in the utilization of land and in farming practices, and for payments in connection therewith in amounts which the university determines to be fair and reasonable.

HISTORY: Codes, 1942, § 4962; Laws, 1936, ch. 291.

§ 69-27-109. Agents.

For the purpose of carrying out each such plan submitted pursuant to Section 69-27-103, and accepted by the Secretary of Agriculture, according to its terms, the university, through its board of trustees, is hereby authorized to delegate any of the powers herein conferred to such agents or agencies as may be designated by the university and approved by the Secretary of Agriculture.

HISTORY: Codes, 1942, § 4963; Laws, 1936, ch. 291.

§ 69-27-111. Reports.

The university shall render for each year an annual report to the Governor, who shall transmit a copy thereof to each house of the Legislature, covering its administration of such plan, as referred to in this article, and all operations thereunder, including also the expenditure of funds, and each such report shall be printed as a public document promptly upon its transmittal to the Governor.

HISTORY: Codes, 1942, § 4964; Laws, 1936, ch. 291.

§ 69-27-113. No liability on university.

Nothing herein shall be construed or operate to impose any obligation or liability upon the university or other than as herein specified.

HISTORY: Codes, 1942, § 4965; Laws, 1936, ch. 291.

ARTICLE 5.

COUNTY AID IN CERTAIN COUNTIES.

Sec.	
69-27-201.	Designated counties authorized to aid soil erosion work.
69-27-203.	Soil erosion committee.
69-27-205.	Soil erosion committees; duties, etc.
69-27-207.	Contracts between county and owner; benefit payments.
69-27-209.	Machinery and equipment; how purchased; operation; election on question of purchase.
69-27-211.	Machinery and equipment; contracts with owners must be first obtained; additional machinery.
69-27-213.	Machinery and equipment; certificates of indebtedness for; tax levy; payment of expenses.
69-27-215.	Notice of completion of contracts; special improvement tax; lien; lump sum payment, etc.
69-27-217.	Tax collector's role; collection of assessment; sale of land for nonpayment; redemption.
69-27-219.	No contracts on incumbered land.
69-27-221.	Price of equipment.
69-27-223.	Additional equipment not purchased until.

§ 69-27-201. Designated counties authorized to aid soil erosion work.

For the purpose of preventing soil erosion and its accompanying evils in Attala, Carroll, Claiborne, Clay, Copiah, Forrest, Franklin, George, Greene, Grenada, Hancock, Harrison, Holmes, Humphreys, Itawamba, Jackson, Kemper, Lamar, Leake, Lee, Madison, Monroe, Neshoba, Oktibbeha, Pearl River, Pike, Prentiss, Rankin, Scott, Stone, Tishomingo, Union, Warren and Webster Counties, Mississippi, so far as possible, said counties are hereby authorized to declare it to be the policy of the county to encourage and assist owners of land therein to properly terrace and ditch their agricultural lands, and cooperate with the federal government in soil erosion work.

HISTORY: Codes, 1942, § 4966; Laws, 1938, ch. 285.

§ 69-27-203. Soil erosion committee.

The director of the state extension service, the director of the state agricultural and forestry experiment station, and the state forester of the State of Mississippi shall, on written application of any five or more landowners of said county, owning an aggregate of not less than seventy-five hundred acres of land therein, appoint a soil erosion committee for said county, to consist of three members, each to be over twenty-five years of age and the record owner of not less than one hundred and sixty acres of land within the county. The term of each member of said committee shall be five years from the date of his appointment, but any member may be removed from office as other public officers and the term of any member of said committee shall cease, if he fails to maintain his ownership of the requisite one hundred and sixty acres of land in the county. Vacancies on said committee shall be filled for a term of five years by appointment in the same manner as the original members were appointed. The members of said committee shall receive no pay for the services to be performed hereunder, but one member of said committee shall be designated by it as secretary of the committee, who shall be paid his reasonable expense out of the soil erosion funds herein provided for, by order of the board of supervisors, upon certificate of the committee.

HISTORY: Codes, 1942, § 4967; Laws, 1938, ch. 285.

§ 69-27-205. Soil erosion committees; duties, etc.

It shall be the duty of said soil erosion committee to cooperate with the county agent in all matters pertaining to soil erosion work within the county, and with all agencies of the state or federal government engaged in the prevention of soil erosion; to assist the county agent, or any other agency, state or federal, in obtaining contracts from landowners for terracing and/or ditching of agricultural lands within the county; to recommend to the board of supervisors the purchase of proper machinery and supplies for ditching and terracing work, either or both; to approve in their discretion all contemplated purchases of such machinery by the board of supervisors, after bids have been received therefor and before contracts have been let by said board for the purchase thereof; to approve in their discretion all contracts or agreements made by the board of supervisors for the employment of labor to operate said machinery before the same shall become operative; to approve the rate which each landowner shall pay for the terracing and/or ditching of his land, to be included in the contract therefor, and to supervise the performance of all such contracts; to personally audit at least once each year the soil erosion fund or funds of the county; and to make recommendations to the board of supervisors pertaining to the administration of such fund, and the amount of taxes, if any, necessary to be levied to maintain the same. Nothing in this section contained shall apply to the purchase of machinery or the employment of labor except for soil erosion and ditching work hereunder.

HISTORY: Codes, 1942, § 4968; Laws, 1938, ch. 285.

§ 69-27-207. Contracts between county and owner; benefit payments.

All contracts entered into hereunder between a county designated in Section 69-27-201 and an owner of land therein for the terracing and/or ditching thereof shall be in such legal form as may be approved by the attorney for the board of supervisors, and each such contract, before becoming effective, shall contain a legal description of the land, shall be signed in his own behalf by the owner of the land, and if the property contained in such description be a part of the homestead of such owner, by the husband or wife, as the case may be, before at least two witnesses, and properly proved for recording, or acknowledged before some officer authorized to accept acknowledgments, shall be approved in writing by the secretary of the soil erosion committee, and shall be accepted by the board of supervisors, by order upon its minutes setting forth the date of the contract and the name of the landowner. Any number of such contracts may be accepted in one order, but no such contract shall be accepted unless all taxes theretofore becoming due and payable on the land therein described have been paid. Upon the acceptance of such contract or contracts, the clerk of the board of supervisors, acting in his official capacity as chancery clerk, shall note upon the lis pendens record the name of such landowner, together with a description of the land contained in such contract, which listing shall be notice to any subsequent purchaser or incumbrancer. Any subsequent transaction concerning such land shall be by reason of such listing and such notice subject to any and all assessments which may thereafter be made by virtue of such contract. All such contracts so accepted shall remain binding upon the signers thereof unless cancelled by an order of the board of supervisors, either of its own motion or by mutual agreement with the then owner of the land. The county shall not be liable for damages or otherwise because of its cancellation of any such contract, or its failure to perform the same; and the owner of the land shall not be required to make any payment under such contract unless and until the work to be done thereunder has been completed. The amount to be paid by the owner of the land for the work to be done under any such contract may at his option be paid in one payment on or before the 1st day of February following the completion thereof, or in not more than four equal annual payments, the first payment to be due on the first day of February following completion of the work, and one on the first day of February in each year thereafter until all are paid, with six per cent (6%) interest from the maturity date of the first payment; but such option shall be exercised in advance, and the terms of payment stated in the contract. All payments under such contracts shall be made to the tax collector of the county, for the benefit of a soil erosion fund or funds, to be collected, accounted for, paid in, and commissions charged thereon by the tax collector, as in case of other taxes collected for the county, except that sales of land for default in such payments shall be as herein provided.

HISTORY: Codes, 1942, § 4969; Laws, 1938, ch. 285.

§ 69-27-209. Machinery and equipment; how purchased; operation; election on question of purchase.

[With regard to any county which is exempt from the provisions of Section 19-2-3, this section shall read as follows:]

The board of supervisors of a county as designated in Section 69-27-201 may, on the recommendation of the soil erosion committee, or shall, if so required by the election hereinafter provided for, advertise for bids as in other cases and purchase the proper terracing and/or ditching machinery, either for the county as a whole or for any one or more supervisors districts thereof as a soil erosion district, and provide the necessary labor for the operation thereof, and the necessary supplies and maintenance to properly operate the same, subject, however, to the approval of the soil erosion committee herein otherwise provided. In event the board of supervisors shall fail or refuse to advertise for bids for the purchase of any machinery recommended by said soil erosion committee within sixty (60) days after receipt of such recommendation, it shall, on the filing with it of a petition signed by ten percent (10%) or more of the qualified electors of the county as a whole, or of one or more supervisors districts as the petition may provide, call and hold as in other cases a special election in said county, or in such one or more supervisors districts, within sixty (60) days after the filing of the petition, in which election the question shall be, for or against the purchase of terracing and/or ditching machinery for the county, or for one or more supervisors districts as the case may be; and if a majority of the votes cast in said election be in favor of the purchase of such machinery, then said board shall, at its next meeting, advertise for bids for the purchase thereof, and thereafter further perform the duties required of it hereunder with respect to soil erosion work. Such advertisement for bids shall constitute notice to the public of the intention of the board to make such purchase and the board may proceed accordingly unless on or before the first day of the meeting at which said bids are to be opened a petition, signed by twenty percent (20%) or more of the qualified electors of the county, exclusive of those who pay poll tax only, or if the soil erosion district is composed of one or more supervisors districts then of twenty percent (20%) or more of such soil erosion district, shall be filed with the clerk of the board protesting against such purchase, in which event such purchase shall not be made unless approved in an election called and held for the purpose in the manner provided for the calling and holding of elections on the question of the issuance of tax anticipation note or notes. Said board shall have full supervision of all soil erosion work, the machinery, labor, supplies, contracts, and the funds arising from work performed, from taxation, if any, or otherwise, except to the extent herein otherwise specifically provided; and in administering the soil erosion fund the board shall take into consideration the repairs and replacements incident to the operation of the character of machinery in use in order that the work may continue without undue interruption as long as may be necessary. In event machinery be purchased hereunder for soil erosion districts composed of one or more supervisors districts, but less than the whole county, then the soil erosion fund shall be administered in one or more subdivisions as may be necessary, so as to keep separate the operations of the several soil erosion districts of the county, and the taxes levied, if any, shall likewise be levied upon said separate soil erosion districts, in the same manner as for separate road districts; and for these purposes such separate soil erosion districts may be designated by name or number, to be declared by the board. All acts and proceedings of the board with respect to soil erosion work and the funds thereof shall be by order upon its minutes, as in other cases. Contracts for terracing and/or ditching shall be performed as nearly as possible in the order of their dates, any deviation therefrom by reason of necessity, public convenience, causes beyond the control of the committee, or agreement with the landowners, to be under the direction of the soil erosion committee. Only one (1) committee shall be appointed in said county, regardless of the number of soil erosion districts in operation therein.

[With regard to any county which is required to operate on a countywide system of road administration as described in Section 19-2-3, this section shall read as follows:]

The board of supervisors of a county as designated in Section 69-27-201 may, on the recommendation of the soil erosion committee, or shall, if so required by the election hereinafter provided for, advertise for bids as in other cases and purchase the proper terracing and/or ditching machinery for the county and provide the necessary labor for the operation thereof, and the necessary supplies and maintenance to properly operate the same, subject, however, to the approval of the soil erosion committee herein otherwise provided. In event the board of supervisors shall fail or refuse to advertise for bids for the purchase of any machinery recommended by said soil erosion committee within sixty (60) days after receipt of such recommendation, it shall, on the filing with it of a petition signed by ten percent (10%) or more of the qualified electors of the county, call and hold as in other cases a special election in said county within sixty (60) days after the filing of the petition, in which election the question shall be, for or against the purchase of terracing and/or ditching machinery for the county; and if a majority of the votes cast in said election be in favor of the purchase of such machinery, then said board shall, at its next meeting, advertise for bids for the purchase thereof, and thereafter further perform the duties required of it hereunder with respect to soil erosion work. Such advertisement for bids shall constitute notice to the public of the intention of the board to make such purchase and the board may proceed accordingly unless on or before the first day of the meeting at which said bids are to be opened a petition, signed by twenty percent (20%) or more of the qualified electors of the county, shall be filed with the clerk of the board protesting against such purchase, in which event such purchase shall not be made unless approved in an election called and held for the purpose in the manner provided for the calling and holding of elections on the question of the issuance of tax anticipation note or notes. Said board shall have full supervision of all soil erosion work, the machinery, labor, supplies, contracts, and the funds arising from work performed, from taxation, if any, or otherwise, except to the extent herein otherwise specifically provided; and in administering the soil erosion fund the board shall take into consideration the repairs and replacements incident to the operation of the character of machinery in use in order that the work may continue without undue interruption as long as may be necessary. All acts and proceedings of the board with respect to soil erosion work and the funds thereof shall be by order upon its minutes, as in other cases. Contracts for terracing and/or ditching shall be performed as nearly as possible in the order of their dates, any deviation therefrom by reason of necessity, public convenience, causes beyond the control of the committee, or agreement with the landowners, to be under the direction of the soil erosion committee. Only one (1) committee shall be appointed in said county.

HISTORY: Codes, 1942, § 4970; Laws, 1938, ch. 285; Laws, 1988 Ex Sess, ch. 14, § 58, eff from and after October 1, 1989.

§ 69-27-211. Machinery and equipment; contracts with owners must be first obtained; additional machinery.

The soil erosion committee shall not, except as herein otherwise provided, make recommendation to the board for the purchase of the first machinery for said county, or part of the county, unless it has contracts in the form herein required, signed by the landowners, duly witnessed, and approved by the secretary of the committee, covering at least seventy-five hundred acres of land, which, however, shall justify the purchase of as many as three outfits of machinery; and thereafter the subsequent contracts made in said county, or part of the county, shall be allocated to the first machinery purchased therefor, until the whole amount reaches a total of not less than four thousand acres to each outfit. Should the committee thereafter obtain or have additional like contracts in said county, or part of the county, covering another four thousand acres or more, the same shall warrant the purchase of additional machinery by recommendation or election as herein provided; and this shall furnish the guide for all further purchases in said county or part of the county. In exceptional cases, where the board finds as a fact that the amount of work to be done upon the land is much greater than in ordinary cases, the board of supervisors may, with the unanimous consent of the soil erosion committee, reduce the amount of contract acreage necessary for the purchase of one outfit of machinery to not less than two thousand acres, and the amount of contract acreage to be allocated to one outfit of machinery to not less than three thousand acres, and the committee may then recommend purchases of machinery when those conditions are complied with, provided that not less than two outfits are owned or to be purchased by said county or part of the county under this article.

HISTORY: Codes, 1942, § 4971; Laws, 1938, ch. 285.

§ 69-27-213. Machinery and equipment; certificates of indebtedness for; tax levy; payment of expenses.

The board of supervisors shall have the right to issue certificates of indebtedness of the county for the purchase price of the necessary machinery for soil erosion work hereunder, or any part of such price, to be paid from the soil erosion fund of the county or part of the county for which such machinery is purchased, which certificates shall be payable in no more than three annual instalments, the first of which in the case of two instalments to be not less than one-half of the aggregate certificates issued for that purchase, and the first two of which in the case of three instalments to be for not less than one-third each of such aggregate, the first instalment in any case to be payable on the first Monday in April of the year following that in which the certificates are issued, and subsequent instalment on the first Monday in April each succeeding year. By its order purchasing such machinery the board may provide for the payment of interest at a rate of not more than six per cent (6%) per annum upon the deferred payments evidenced by said certificates, in which event said certificates shall show upon their face that fact, and shall be payable with interest accordingly; and said certificates shall also show upon their face the date when and the purpose for which issued, the principal amount of the certificate, the aggregate amount of the certificates issued for that particular purchase, the date when payable, and whether payable from the soil erosion fund of the whole county or of some named or numbered soil erosion district thereof; and all such certificates shall be signed by the president of the board, shall be countersigned by the clerk thereof, shall have the seal of the county impressed thereon, and shall be registered by the clerk when issued as is required in the case of bonds, and may be validated as such. The board shall also make appropriate provision, by budget and tax levy as in other cases, to so govern and supplement the soil erosion fund arising from performance of contracts for landowners, as to make prompt payments of all bills for labor, fuel, oil, supplies, repairs and other necessary cost and expenses incident to the operation of said machinery, the performance of said contracts, and the carrying out of the provisions hereof, and prompt payment of the certificates of indebtedness issued for the purchase of machinery, with interest, if any, as and when due. The board may also borrow money for the county in anticipation of taxes and the special assessments herein provided for, for the payment of current operating expenses of soil erosion work, as in case of other current operating expenses, the same to be paid out of the soil erosion fund, supplemented if necessary by a special tax as in other cases. Money so borrowed, as well as the certificates of indebtedness issued for the purchase of machinery, shall be a liability of the county until paid. The certificates herein provided for shall not be taken into consideration under any debt limitation statute.

HISTORY: Codes, 1942, § 4972; Laws, 1938, ch. 285.

§ 69-27-215. Notice of completion of contracts; special improvement tax; lien; lump sum payment, etc.

It shall be the duty of the soil erosion committee to notify the board of supervisors, the county assessor and the landowner within fifteen days after the performance of each contract by the county or separate soil erosion district, giving the assessor the name of the landowner, the legal description of the land, the amount to be paid to the county or district, and how payable, and to the landowner a notice that a special assessment will be made against his land by the assessor for the amount determined by the committee, and presented to the next meeting of the board of supervisors beginning more than ten days thereafter for approval. The assessor shall, at the next meeting of the board beginning more than ten days after such notice, file with the board of supervisors, in duplicate, on appropriate forms, keeping a copy thereof on file in his own office, an assessment of the land for a special improvement tax thereon equal to the amount fixed by the committee, and payable as provided by the contract. It shall be the duty of the board of supervisors at said meeting to hear any objections to such assessment, by the landowner or the holder of any lien thereon, and to determine the amount of the assessment, not to exceed the amount fixed by the committee, and to approve the assessment as finally determined. The clerk of the board shall forthwith certify such assessment to the tax collector of the county upon the duplicate of the assessment filed by the assessor. In event such assessment be not returned to or acted upon by the board at the first meeting for any reason, it may be returned, considered and acted upon at any subsequent meeting. When approved, such assessment shall be a lien upon the land subordinate only to the lien of other taxes, prior and subsequent, and no delay or irregularity in the giving of notices, the making of the assessment, the hearing and approval thereof, or the certification thereof to the tax collector, shall affect the validity of the assessment if the work was actually done upon the land and the amount of the assessment does not exceed the contract price. Appeals may be taken to the circuit court of the county as in other cases of assessments for taxation, by the landowner or the holder of any lien upon the land. Nothing herein contained shall prevent any landowner from making payment to the tax collector of the estimated amount to become due under his contract, or any part thereof, in advance of the time the same becomes due, and the tax collector shall receive any payment so tendered, and give the landowner credit therefor against the assessment when made.

HISTORY: Codes, 1942, § 4973; Laws, 1938, ch. 285.

§ 69-27-217. Tax collector's role; collection of assessment; sale of land for non-payment; redemption.

It shall be the duty of the tax collector to preserve all assessments so certified to him, to note upon the real property assessment roll of the county or county district upon which ad valorem taxes are to be collected for the year in which said work was done, the fact that said land is subject to a special soil erosion fund tax, and to collect with the other taxes payable on February first, giving a separate receipt therefor, the amount of the special soil erosion fund tax then due accordingly, and to so continue from year to year until such a special tax has been paid in full. If said special tax was to be paid in one payment within one year after completion of the work, the assessment shall be made accordingly, and the tax shall be then payable, and shall be collected at the time shown by the assessment. In event said tax or any part thereof is not paid when due, the tax collector shall advertise and sell the land liable therefor as in the case of lands sold for the non-payment of drainage district taxes, and all provisions of law applicable to such drainage district tax sales shall be applied in the case of soil erosion fund tax sales, except that if there are no other bidders the soil erosion committee shall become the purchaser on behalf of and in the name of the county, a sale or sales may be made on the first Monday of any month, and such sales shall be subordinate to all other sales of taxes, prior or subsequent, to the same extent as sales for other special improvements. For the protection of its rights hereunder, any of said counties may redeem from sale of any such lands to the state after any tax sale thereof by payment to the state of the state taxes with damages thereon and costs of sale.

HISTORY: Codes, 1942, § 4974; Laws, 1938, ch. 285.

§ 69-27-219. No contracts on incumbered land.

No contract shall be approved by the soil erosion committee of any of said counties designated in Section 69-27-201, concerning any lands whereon there is any lien of any character whatever, except lien for current taxes, unless the holder of such lien shall have first approved such contract, and such approval shall operate as a waiver of such lien in favor of and in subordination to any subsequent special assessment made in accordance herewith.

HISTORY: Codes, 1942, § 4975; Laws, 1938, ch. 285.

§ 69-27-221. Price of equipment.

No bids for furnishing equipment under the provisions of this article may be considered or accepted by any county, unless said bid is the factory list price plus a reasonable delivery charge.

HISTORY: Codes, 1942, § 4976; Laws, 1938, ch. 285.

§ 69-27-223. Additional equipment not purchased until.

In the event of a tax levy being made to pay the purchase price of any equipment purchased under this article, the county shall not be authorized to purchase any additional equipment until enough money has been collected from the use of equipment already purchased, sufficient to pay back into the county treasury the full amount collected by such tax levy.

HISTORY: Codes, 1942, § 4977; Laws, 1938, ch. 285.

ARTICLE 7.

SOIL AND WATER CONSERVATION COST-SHARE PROGRAM.

Sec.
69-27-301. Definitions.
69-27-303. Administration of program.
69-27-305. Authority to employ personnel and procure supplies.
69-27-307. Rulemaking powers.
69-27-308. Participation in water quality cost-share project.

Sec.
69-27-309. Use of funds appropriated for commission.
69-27-311. Implementation of program; recovery of improperly used grants.
69-27-313. Application for assistance; consideration by commission.
69-27-315. Application to state-owned lands.

§ 69-27-301. Definitions.

The following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Commission" shall mean the Mississippi Soil and Water Conservation Commission.

(b) "District" or "soil and water conservation district" means a governmental subdivision of the state and a public body , corporate and politic, organized in accordance with the provisions of Section 69-27-1, Mississippi Code of 1972, for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(c) "State" means the State of Mississippi.

(d) "Agency of this state" includes the government of this state and any subdivision, agency or instrumentality, corporate or otherwise, of the government of this state.

(e) "United States" or "agencies of the United States" includes the United States of America, the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(f) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(g) "Landowner" or "owner of land" includes any person, firm, or corporation who shall hold legal or equitable title to any lands lying within a soil and water conservation district.

(h) "Land operator" or "operator of land" includes any person, firm or corporation, other than the owner, who shall be in possession of any lands lying within a soil and water conservation district whether as lessee, renter, tenant or otherwise.

(i) "Eligible lands" shall mean lands owned or leased by a private individual, group or association, and lands owned by the State of Mississippi or any political subdivision thereof.

(j) "Cost-share assistance" shall mean partial financial assistance in such amounts as the commission, in its discretion, shall determine, subject to the limitations as set by the State Soil and Water Conservation Commission.

(k) "Approved practice" means those farming practices or operations that are carried out in a manner that will directly benefit the conservation, development or proper utility of soil and water resources.

HISTORY: Laws, 1985, ch. 375, § 1, eff from and after July 1, 1985.

RESEARCH REFERENCES

Am. Jur.	**CJS.**
3 Am. Jur. 2d, Agriculture § 23.	3 C.J.S. Agriculture § 72.

§ 69-27-303. Administration of program.

The commission shall serve as the administrator of the provisions of this article and shall serve as the disbursing agency for funds to be expended from and deposited to the credit of the Soil and Water Cost-Share Program.

HISTORY: Laws, 1985, ch. 375, § 2, eff from and after July 1, 1985.

§ 69-27-305. Authority to employ personnel and procure supplies.

The commission and districts are authorized to employ such professional and clerical assistance and obtain such supplies and equipment as needed to implement this program.

HISTORY: Laws, 1985, ch. 375, § 3, eff from and after July 1, 1985.

§ 69-27-307. Rulemaking powers.

The commission shall adopt and promulgate such rules and regulations as necessary for the implementation of the Mississippi Soil and Water Cost-Share Program. The commission is authorized to conduct public hearings or otherwise seek the advice, counsel and recommendations of interested owners, associations, industrialists or other persons or groups. Adequate notice of any public hearing must be provided within the general area of the site of the hearing. The commission shall publish such rules and regulations and shall make the same available upon request.

HISTORY: Laws, 1985, ch. 375, § 4, eff from and after July 1, 1985.

RESEARCH REFERENCES

Am. Jur.	**CJS.**
3 Am. Jur. 2d, Agriculture § 23.	3 C.J.S. Agriculture § 72.

§ 69-27-308. Participation in water quality cost-share project.

For a district commissioner to participate in any water quality cost-share project funded directly or indirectly by the United States Environmental Protection Agency, the district board of which the commissioner is a member shall not participate in the proposal, development, planning, advisory or implementation phases of the project. The Mississippi Soil and Water Conservation Commission shall make all decisions without the involvement of the district board.

HISTORY: Laws, 1996, ch 378, § 1, eff from and after passage (approved March 18, 1996).

§ 69-27-309. Use of funds appropriated for commission.

The commission is authorized to use money appropriated therefor to assist in implementing approved practices on a cost-sharing basis on eligible lands in the State of Mississippi.

HISTORY: Laws, 1985, ch. 375, § 5, eff from and after July 1, 1985.

§ 69-27-311. Implementation of program; recovery of improperly used grants.

The commission shall have the following powers and duties to implement the provisions of the Mississippi Soil and Water Cost-Share Program:

(a) To determine which approved practices shall be eligible for cost-share assistance;

(b) To establish maximum sums and cost-share rates which any one eligible landowner or land operator may receive for implementation of an approved practice;

(c) To review periodically the costs of establishing conservation practices and to make such adjustment as, in the discretion of the commission, is necessary.

Upon request of the commission, the Attorney General of the State of Mississippi shall institute proper legal proceedings to recover any or all of the cost-share assistance provided an eligible landowner or land operator if the commission shall determine that the landowner or land operator failed to implement any portion of or all of the practice approved by the commission for such landowner or land operator, and if the commission determines that legal proceedings are necessary and proper.

HISTORY: Laws, 1985, ch. 375, § 6, eff from and after July 1, 1985.

RESEARCH REFERENCES

ALR.

Constitutionality of reforestation or forest conservation legislation. 13 A.L.R.2d 1095.

Validity and construction of anti-water pollution statutes or ordinances. 32 A.L.R.3d 215.

Conservation: validity, construction, and application of enactments restricting land development by dredging or filling. 46 A.L.R.3d 1422.

Validity, construction, and application of statutes requiring assessment of environmental information prior to grants of entitlements for private land use. 76 A.L.R.3d 388.

State and local regulation of private landowner's disposal of solid waste on own property. 37 A.L.R.4th 635.

Am. Jur.

3 Am. Jur. 2d, Agriculture § 23.

CJS.

3 C.J.S. Agriculture § 72.

§ 69-27-313. Application for assistance; consideration by commission.

Any eligible landowner or land operator who wishes to receive cost-share assistance shall file an application with the soil and water conservation district stating the practice to be implemented. Upon the receipt of an application, the district shall:

(a) Make a need and feasibility determination;

(b) Inform the landowner or land operator of the result of the needs and feasibility study and inform the landowner or land operator as to what practice is approved for installation.

HISTORY: Laws, 1985, ch. 375, § 7, eff from and after July 1, 1985.

RESEARCH REFERENCES

ALR.

Constitutionality of reforestation or forest conservation legislation. 13 A.L.R.2d 1095.

Validity and construction of anti-water pollution statutes or ordinances. 32 A.L.R.3d 215.

Conservation: validity, construction, and application of enactments restricting land development by dredging or filling. 46 A.L.R.3d 1422.

Validity, construction, and application of statutes requiring assessment of environmental information prior to grants of entitlements for private land use. 76 A.L.R.3d 388.

State and local regulation of private landowner's disposal of solid waste on own property. 37 A.L.R.4th 635.

Am. Jur.

3 Am. Jur. 2d, Agriculture § 22.

CJS.

3 C.J.S. Agriculture § 57.

§ 69-27-315. Application to state-owned lands.

Any agency, department, board, commission or other subdivision of government of the State of Mississippi, or any political subdivision thereof, is authorized to implement an approved practice on any lands owned by such political entity or owned by the State of Mississippi and supervised or managed by such entity. The governing authorities of such entity shall engage the assistance of the county conservation district of the county in which the land is located in the preparation of an application for submission to the district. The district shall treat any such political entity as an individual owner for purposes of considering applications, granting cost-share assistance and approving the practice implemented.

HISTORY: Laws, 1985, ch. 375, § 8, eff from and after July 1, 1985.

ARTICLE 9.

ACQUISITION OF HEAVY OR SPECIALIZED MACHINERY OR EQUIPMENT NECESSARY FOR INSTALLATION OF SOIL AND WATER CONSERVATION MEASURES.

Sec.	
69-27-331.	Conservation commission authorized to acquire and make available machinery and equipment; amortization of costs; rental fees.
69-27-333.	Commission to retain title to machinery and equipment.
69-27-335.	Record keeping requirements; inventory of equipment.
69-27-337.	Payment of amortized rental fees; collection of delinquent payments; deposit of funds.
69-27-339.	Conservation districts authorized to obtain machinery or equipment in combination.
69-27-341.	Commission authorized to promulgate rules and regulations.
69-27-343.	Revolving fund.
69-27-345.	Authority to issue bonds to fund revolving fund.
69-27-347.	State's full faith and credit pledged; repayment of bonds.
69-27-349.	Terms of bonds; sale of bonds; expenses of issuance.
69-27-351.	Interest on bonds; maturity of bonds.
69-27-353.	Notice of sale of bonds.
69-27-355.	Execution of bonds; signatures on bonds.
69-27-357.	Deposit of proceeds of bonds; disbursements.
69-27-359.	Attorney General to represent Bond Commission in issuing bonds; payment of costs.
69-27-361.	Bonds as legal investments.
69-27-363.	Bonds and income exempt from certain taxes.
69-27-365.	Sections 69-27-345 through 69-27-363 as complete authority for issuance of bonds.
69-27-367.	Severability provision.
69-27-369.	Sale of equipment by Commission; retention and use of funds solely for purchase of equipment.

§ 69-27-331. Conservation commission authorized to acquire and make available machinery and equipment; amortization of costs; rental fees.

(1)(a) The State Soil and Water Conservation Commission, subject to the restrictions provided in Sections 69-27-331 through 69-27-341, is authorized to acquire and to make available, or to assist in acquiring or making available to soil and water conservation districts, heavy or specialized machinery or equipment deemed necessary for installation and implementation of soil and water conservation practices or measures.

(b) The heavy or specialized machinery or equipment purchased under this section may be either new or used. The commission may purchase used equipment through a duly licensed and authorized public auction of agricultural, heavy or specialized equipment as authorized under Section 31-7-13.

(2) When the commission acquires or makes available to any district the machinery or equipment referred to in subsection (1) of this section, it shall

require the district to fully amortize to the commission any amount so expended by the commission for such assistance. The amount and method of amortization for each piece of heavy or specialized machinery or equipment shall be determined by the commission in conjunction with the soil and water conservation district. In making this determination, the following shall be considered: (a) full amortization to the commission of the capital outlay for the machinery or equipment over the period of its reasonably anticipated full usefulness; and, when necessary (b) (i) cover the cost of operation, maintenance and repairs; (ii) pay the usual cost of providing an operator; (iii) compensate the district for the usual costs of transportation from one (1) job to another.

(3) In giving effect to all of the foregoing, the commission shall estimate the amount of time such machinery or equipment would ordinarily be idle.

HISTORY: Laws, 1990, ch. 499, § 1; Laws, 1991, ch. 341, § 1; Laws, 2001, ch. 333, § 1, eff from and after passage (approved Mar. 5, 2001).

Cross References — Used heavy or specialized machinery or equipment for installation of soil and water conservation practices purchased at auction, see § 31-7-13.

State Soil and Water Conservation Commission, see § 69-27-1 et seq.

Record keeping requirements with respect to use of machinery and equipment referred to in this section, see § 69-27-335.

Authority for districts to combine to obtain machinery and equipment referred to in this section, see § 69-27-339.

Authority of commission to promulgate rules and regulations to effectuate the purposes of this section, see § 69-27-341.

Cost of machinery and equipment acquired by commission under this section to be paid from revolving fund, see § 69-27-343.

§ 69-27-333. Commission to retain title to machinery and equipment.

The Soil and Water Conservation Commission shall retain title to each piece of heavy or specialized machinery or equipment so purchased and made available to any soil and water conservation district until such time as the district fully amortizes the commission's investment in such machinery or equipment. After the commission's investment in such machinery or equipment has been fully amortized, it is authorized and empowered to transfer the title thereto to the district.

HISTORY: Laws, 1990, ch. 499, § 2, eff from and after July 1, 1990.

Cross References — State Soil and Water Conservation Commission, see § 69-27-1 et seq.

Authority of commission to promulgate rules and regulations to effectuate the purposes of this section, see § 69-27-341.

Cost of machinery and equipment acquired by commission under this section to be paid from revolving fund, see § 69-27-343.

§ 69-27-335. Record keeping requirements; inventory of equipment.

Each soil and water conservation district which receives or uses the machinery or equipment referred to in Section 69-27-331 shall maintain its public records to show for each piece of machinery or equipment: (a) the amounts collected from each job in each district; (b) the expense of repairing, moving, manning and other usual cost of operation; and (c) the amount paid by each district for the purpose of amortizing the commission's investment in such machinery or equipment. Each of such districts shall send a duplicate copy of those records to the commission, which shall retain such copies in its files for public inspection. In addition thereto, the commission shall at all times maintain an account showing each piece of machinery or equipment the title to which is vested in it, the amount paid thereon by any soil and water conservation district, and the amount remaining to be amortized; and the commission shall also maintain a current inventory of all such equipment, shall have such equipment marked and identified as being the property of the commission, and shall promulgate rules and regulations which shall ensure that the use of such equipment within each district is on an equitable basis.

HISTORY: Laws, 1990, ch. 499, § 3, eff from and after July 1, 1990.

Cross References — Authority of commission to promulgate rules and regulations to effectuate the purposes of this section, see § 69-27-341.

Cost of machinery and equipment acquired by commission under this section to be paid from revolving fund, see § 69-27-343.

§ 69-27-337. Payment of amortized rental fees; collection of delinquent payments; deposit of funds.

The amount paid by any such district to the commission for amortization purposes shall be made semiannually. When payments are not received by the commission within sixty (60) days of the due date the commission shall take all necessary actions to collect such delinquent payments. Amounts received or collected hereunder shall be credited to the revolving fund created in Section 69-27-343.

HISTORY: Laws, 1990, ch. 499, § 4, eff from and after July 1, 1990.

Cross References — Authority of commission to promulgate rules and regulations to effectuate the purposes of this section, see § 69-27-341.

Cost of machinery and equipment acquired by commission under this section to be paid from revolving fund, see § 69-27-343.

§ 69-27-339. Conservation districts authorized to obtain machinery or equipment in combination.

Any two (2) or more soil and water conservation districts may combine with each other for the purpose of obtaining and using the machinery or equipment referred to in Section 69-27-331, on the terms and conditions set forth in Sections 69-27-331 through 69-27-341.

HISTORY: Laws, 1990, ch. 499, § 5, eff from and after July 1, 1990.

Cross References — Authority of commission to promulgate rules and regulations to effectuate the purposes of this section, see § 69-27-341.

Cost of machinery and equipment acquired by commission under this section to be paid from revolving fund, see § 69-27-343.

§ 69-27-341. Commission authorized to promulgate rules and regulations.

The commission is authorized to promulgate such rules and regulations or methods of accounting as may be necessary or expedient to give effect to the purposes expressed in Sections 69-27-331 through 69-27-341.

HISTORY: Laws, 1990, ch. 499, § 6, eff from and after July 1, 1990.

Cross References — Cost of machinery and equipment acquired by commission under this section to be paid from revolving fund, see § 69-27-343.

§ 69-27-343. Revolving fund.

There is created in the State Treasury a revolving fund which shall be comprised of any monies appropriated thereto by the Legislature, the proceeds from any bonds issued under Sections 69-27-345 through 69-27-365, and payments made by districts to the commission for amortization purposes. The costs of all machinery and equipment acquired by the commission for soil and water conservation districts under Sections 69-27-331 through 69-27-341 shall be paid from the revolving fund. The monies in the revolving fund shall not be used for any purpose other than to make available to soil and water conservation districts the machinery and equipment of the type referred to in Section 69-27-331 or to make principal and interest payments on the bond issue as required by Section 69-27-347. The monies in the revolving fund shall not lapse to the General Fund at the end of the fiscal year.

HISTORY: Laws, 1990, ch. 499, § 7, eff from and after July 1, 1990.

Cross References — Deposit of amortized rental fees for use of machinery or equipment into fund created in this section, see § 69-27-337.

Sale of bonds to provide funds for revolving fund established in this section, see § 69-27-345.

Bond payments to be made from fund established in this section, see § 69-27-347.

Proceeds from sale of bonds to be deposited in fund established in this section, see § 69-27-357.

§ 69-27-345. Authority to issue bonds to fund revolving fund.

The State Soil and Water Conservation Commission is authorized, at one time or from time to time, to declare by resolution the necessity for issuance of negotiable general obligation bonds of the State of Mississippi to provide funds for the revolving fund established in Section 69-27-343. Upon the adoption of a resolution by the commission, declaring the necessity for the issuance of any part or all of the general obligation bonds authorized by Sections 69-27-345 through 69-27-365, the commission shall deliver a certified copy of its resolution or resolutions to the State Bond Commission. Upon receipt of same, the State Bond Commission, in its discretion, shall act as the issuing agent, prescribe the form of the bonds, advertise for and accept bids, issue and sell the bonds so authorized to be sold, and do any and all other things necessary and advisable in connection with the issuance and sale of such bonds. The amount of bonds issued under Sections 69-27-345 through 69-27-365 shall not exceed Five Hundred Thousand Dollars ($500,000.00) in the aggregate.

HISTORY: Laws, 1990, ch. 499, § 8; Laws, 2005, ch. 521, § 4, eff from and after passage (approved Apr. 20, 2005).

Cross References — State Bond Commission, see § 31-17-1 et seq.

State Soil and Water Conservation Commission, see § 69-27-1 et seq.

Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Interest rates for bonds issued under this section, see § 69-27-351.

Attorney General to represent commission in issuing, selling and validating bonds authorized under this section, see § 69-27-359.

Bonds issued under this section as legal investments, see § 69-27-361.

Bonds issued under this section, and income therefrom, as tax exempt, see § 69-27-363.

Sections 69-27-345 through 69-27-363 as complete authority to issue bonds authorized by this section, see § 69-27-365.

§ 69-27-347. State's full faith and credit pledged; repayment of bonds.

For the payment of such bonds and the interest thereon, the full faith, credit, and taxing power of the State of Mississippi are hereby irrevocably pledged. If the Legislature finds that there are sufficient funds available in the General Fund of the State Treasury to pay maturing principal and accruing interest of the bonds, and if the Legislature appropriates such available funds for the purpose of paying such maturing principal and accruing interest, then the maturing principal and accruing interest of the bonds shall be paid from appropriations made by the Legislature from the General Fund of the State Treasury.

All monies in such revolving fund which are not necessary to pay accruing bonds and interest shall be invested by the State Treasurer in such securities as are provided by law for the investment of funds of the state, and the earnings on such investments shall be transferred by the Treasurer into the revolving fund created in Section 69-27-343.

HISTORY: Laws, 1990, ch. 499, § 9; Laws, 2005, ch. 521, § 5, eff from and after passage (approved Apr. 20, 2005).

Cross References — State Soil and Water Conservation Commission, see § 69-27-1 et seq.

Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Resolution by commission declaring necessity of bonds authorized by this section and maximum amount of such bonds, see § 69-27-345.

Interest rates for bonds issued under this section, see § 69-27-351.

Attorney General to represent commission in issuing, selling and validating bonds authorized under this section, see § 69-27-359.

Bonds issued under this section as legal investments, see § 69-27-361.

Bonds issued under this section, and income therefrom, as tax exempt, see § 69-27-363.

Sections 69-27-345 through 69-27-363 as complete authority to issue bonds authorized by this section, see § 69-27-365.

§ 69-27-349. Terms of bonds; sale of bonds; expenses of issuance.

Such bonds may be executed and delivered by the state at any time and from time to time, may be in such form and denominations and of such terms and maturities, may be in fully registered form or in bearer form registrable either as to principal or interest or both, may bear such conversion privileges and be payable in such installments and at such time or times not exceeding twenty (20) years from the date thereof, may be payable at such place or places, whether within or without the State of Mississippi, may bear interest payable at such time or times and at such place or places and evidenced in such manner, and may contain such provisions not inconsistent herewith, all as shall be provided in the proceedings of the State Bond Commission under which the bonds are authorized to be issued. Such bonds shall not bear a greater overall maximum interest rate to maturity than that authorized by law for general obligation bonds. If deemed advisable by the State Bond Commission, there may be retained in the proceedings under which any such bonds are authorized to be issued an option to redeem all or any part thereof as may be specified in such proceedings, at such price or prices and after such notice or notices and on such terms and conditions as may be set forth in such proceedings and briefly recited or referred to on the face of the bonds, but nothing herein contained shall be construed to confer on the state any right or option to redeem any bonds, except as may be provided in the proceedings under which they shall be issued. Any such bonds shall be sold on sealed bids at public sale, and for such price as the State Bond Commission determines to be in the best interest of the State of Mississippi, but no such sale shall be made at a price less than par value plus accrued interest to date of delivery of the bonds to the purchaser. The state may pay all expenses, premiums and commissions which the State Bond Commission may deem necessary or advantageous in connection with the issuance thereof, but solely from the proceeds of the bonds. The issuance by the state of one or more series of bonds shall not preclude it from issuing other series of bonds, but the proceedings under which any subsequent bonds may be issued shall recognize and protect any prior pledge made for any prior issuance of bonds.

HISTORY: Laws, 1990, ch. 499, § 10, eff from and after July 1, 1990.

Cross References — State Bond Commission, see § 31-17-1 et seq.

Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Resolution by commission declaring necessity of bonds authorized by this section and maximum amount of such bonds, see § 69-27-345.

Interest rates for bonds issued under this section, see § 69-27-351.

Attorney General to represent commission in issuing, selling and validating bonds authorized under this section, see § 69-27-359.

Bonds issued under this section as legal investments, see § 69-27-361.

Bonds issued under this section, and income therefrom, as tax exempt, see § 69-27-363.

Sections 69-27-345 through 69-27-363 as complete authority to issue bonds authorized by this section, see § 69-27-365.

§ 69-27-351. Interest on bonds; maturity of bonds.

No bond issued under Sections 69-27-345 through 69-27-365 shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its stated maturity date at the interest rate specified on the bonds; and all bonds of the same maturity shall bear the same rate of interest from date to maturity. All interest accruing on bonds shall be payable semiannually or annually, except the first interest coupon attached to any bond may be for any period not exceeding one (1) year. If bonds are issued in coupon form, no interest payment shall be evidenced by more than one (1) coupon, and neither cancelled nor supplemental coupons shall be permitted. If serial bonds, such bonds shall mature annually, and the first maturity date thereof shall not be more than five (5) years from the date of such bonds.

HISTORY: Laws, 1990, ch. 499, § 11, eff from and after July 1, 1990; Laws, 1993, ch. 472, § 5, eff from and after passage (approved March 27, 1993).

Cross References — Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Resolution by commission declaring necessity of bonds authorized by this section and maximum amount of such bonds, see § 69-27-345.

Attorney General to represent commission in issuing, selling and validating bonds authorized under this section, see § 69-27-359.

Bonds issued under this section as legal investments, see § 69-27-361.

Bonds issued under this section, and income therefrom, as tax exempt, see § 69-27-363.

Sections 69-27-345 through 69-27-363 as complete authority to issue bonds authorized by this section, see § 69-27-365.

§ 69-27-353. Notice of sale of bonds.

Notice of the sale of any such bonds shall be published at least two (2) times, the first of which shall be made not less than ten (10) days prior to the date of sale, and shall be so published in one or more newspapers having a general circulation in the City of Jackson and in one or more other newspapers or financial journals with a large national circulation, to be selected by the State Bond Commission.

HISTORY: Laws, 1990, ch. 499, § 12, eff from and after July 1, 1990.

Cross References — State Bond Commission, see § 31-17-1 et seq.

Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Resolution by commission declaring necessity of bonds authorized by this section and maximum amount of such bonds, see § 69-27-345.

Interest rates for bonds issued under this section, see § 69-27-351.

Attorney General to represent commission in issuing, selling and validating bonds authorized under this section, see § 69-27-359.

Bonds issued under this section as legal investments, see § 69-27-361.

Bonds issued under this section, and income therefrom, as tax exempt, see § 69-27-363.

Sections 69-27-345 through 69-27-363 as complete authority to issue bonds authorized by this section, see § 69-27-365.

§ 69-27-355. Execution of bonds; signatures on bonds.

All bonds shall be executed on behalf of the state by the manual or facsimile signature of the Chairman of the State Bond Commission and shall be countersigned by the manual or facsimile signature of the Secretary of the State Bond Commission. All coupons shall be executed on behalf of the state by the facsimile signatures of the Chairman and Secretary of the State Bond Commission. If the officers whose signatures or countersignatures appear on the bonds or interest coupons shall cease to be such officers before delivery of the bonds, such signatures or countersignatures shall nevertheless be valid and sufficient for all purposes, the same as if they had remained in office until such delivery, or had been in office on the date such bonds may bear.

HISTORY: Laws, 1990, ch. 499, § 13, eff from and after July 1, 1990.

Cross References — State Bond Commission, see § 31-17-1 et seq.

Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Resolution by commission declaring necessity of bonds authorized by this section and maximum amount of such bonds, see § 69-27-345.

Interest rates for bonds issued under this section, see § 69-27-351.

Attorney General to represent commission in issuing, selling and validating bonds authorized under this section, see § 69-27-359.

Bonds issued under this section as legal investments, see § 69-27-361.

Bonds issued under this section, and income therefrom, as tax exempt, see § 69-27-363.

Sections 69-27-345 through 69-27-363 as complete authority to issue bonds authorized by this section, see § 69-27-365.

§ 69-27-357. Deposit of proceeds of bonds; disbursements.

Upon the issuance and sale of such bonds, the State Bond Commission shall transfer the proceeds of any such sale or sales to the revolving fund created in Section 69-27-343. The proceeds of such bonds shall be disbursed solely upon the order of the Soil and Water Conservation Commission under such restrictions, if any, as may be contained in the resolution providing for the issuance of the bonds.

HISTORY: Laws, 1990, ch. 499, § 14, eff from and after July 1, 1990.

Cross References — State Bond Commission, see § 31-17-1 et seq.

State Soil and Water Conservation Commission, see § 69-27-1 et seq.

Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Resolution by commission declaring necessity of bonds authorized by this section and maximum amount of such bonds, see § 69-27-345.

Interest rates for bonds issued under this section, see § 69-27-351.

Attorney General to represent commission in issuing, selling and validating bonds authorized under this section, see § 69-27-359.

Bonds issued under this section as legal investments, see § 69-27-361.

Bonds issued under this section, and income therefrom, as tax exempt, see § 69-27-363.

Sections 69-27-345 through 69-27-363 as complete authority to issue bonds authorized by this section, see § 69-27-365.

§ 69-27-359. Attorney General to represent Bond Commission in issuing bonds; payment of costs.

Except as otherwise authorized in Section 7-5-39, the Attorney General of the State of Mississippi shall represent the Soil and Water Conservation Commission in issuing, selling and validating bonds authorized under Sections 69-27-345 through 69-27-365, and the commission is authorized to pay from the proceeds derived from the sale of such bonds or from other funds available to the commission, the reasonable cost of approving attorney's fees, validating, printing, cost of delivery of such bonds and any other necessary costs of issuance.

HISTORY: Laws, 1990, ch. 499, § 15; Laws, 2012, ch. 546, § 31, eff from and after July 1, 2012.

Cross References — State Soil and Water Conservation Commission, see § 69-27-1 et seq.

Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Resolution by commission declaring necessity of bonds authorized by this section and maximum amount of such bonds, see § 69-27-345.

Interest rates for bonds issued under this section, see § 69-27-351.

Bonds issued under this section as legal investments, see § 69-27-361.

Bonds issued under this section, and income therefrom, as tax exempt, see § 69-27-363.

Sections 69-27-345 through 69-27-363 as complete authority to issue bonds authorized by this section, see § 69-27-365.

§ 69-27-361. Bonds as legal investments.

Bonds issued under Sections 69-27-345 through 69-27-365 shall be legal investments for commercial banks, trust companies, savings and loan associations and insurance companies organized under the laws of this state.

HISTORY: Laws, 1990, ch. 499, § 16, eff from and after July 1, 1990.

Cross References — Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Resolution by commission declaring necessity of bonds authorized by this section and maximum amount of such bonds, see § 69-27-345.

Interest rates for bonds issued under this section, see § 69-27-351.

Attorney General to represent commission in issuing, selling and validating bonds authorized under this section, see § 69-27-359.

Bonds issued under this section, and income therefrom, as tax exempt, see § 69-27-363.

Sections 69-27-345 through 69-27-363 as complete authority to issue bonds authorized by this section, see § 69-27-365.

§ 69-27-363. Bonds and income exempt from certain taxes.

All bonds issued under Sections 69-27-345 through 69-27-365 and the income therefrom shall be exempt from all taxation except gift, transfer and inheritance taxes.

HISTORY: Laws, 1990, ch. 499, § 17, eff from and after July 1, 1990.

Cross References — Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Resolution by commission declaring necessity of bonds authorized by this section and maximum amount of such bonds, see § 69-27-345.

Interest rates for bonds issued under this section, see § 69-27-351.

Attorney General to represent commission in issuing, selling and validating bonds authorized under this section, see § 69-27-359.

Bonds issued under this section as legal investments, see § 69-27-361.

Sections 69-27-345 through 69-27-363 as complete authority to issue bonds authorized by this section, see § 69-27-365.

§ 69-27-365. Sections 69-27-345 through 69-27-363 as complete authority for issuance of bonds.

Sections 69-27-345 through 69-27-363, without reference to any statute not referred to herein, shall be deemed to be full and complete authority for the issuance of such bonds, and shall be construed as an additional and alternative method therefor, and none of the present restrictions, requirements, conditions or limitations of law applicable to the issuance or sale of bonds, notes or other obligations by the state shall apply to the issuance and sale of bonds under Sections 69-27-345 through 69-27-363, and no proceedings shall be required for the issuance of such bonds other than those provided for and required herein, and all powers necessary to be exercised in order to carry out the provisions of Sections 69-27-345 through 69-27-363 are hereby conferred.

HISTORY: Laws, 1990, ch. 499, § 18, eff from and after July 1, 1990.

Cross References — Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Resolution by commission declaring necessity of bonds authorized by this section and maximum amount of such bonds, see § 69-27-345.

Interest rates for bonds issued under this section, see § 69-27-351.

Attorney General to represent commission in issuing, selling and validating bonds authorized under this section, see § 69-27-359.

Bonds issued under this section as legal investments, see § 69-27-361.

Bonds issued under this section, and income therefrom, as tax exempt, see § 69-27-363.

§ 69-27-367. Severability provision.

If for any reason any section, paragraph, provision, clause or part of Sections 69-27-345 through 69-27-365 shall be held unconstitutional or invalid, that section shall not affect or invalidate any other section, paragraph, provision, clause or part of sections 69-27-331 through 69-27-367 not in and of itself invalid, but the remaining portions thereof shall be in force without regard to that so invalidated.

HISTORY: Laws, 1990, ch. 499, § 19, eff from and after July 1, 1990.

§ 69-27-369. Sale of equipment by Commission; retention and use of funds solely for purchase of equipment.

(1) The Soil and Water Conservation Commission is hereby authorized to retain all funds generated from the sale of equipment. Any funds made available from the sale of equipment shall be deposited into the special fund in the State Treasury to the credit of the Soil and Water Conservation Commission and shall be used solely for the purpose of purchasing equipment.

(2) Sales of equipment may be made by the Soil and Water Conservation Commission by any lawful method, including public auction. The Department of Audit shall adopt rules and regulations governing any sale conducted by public auction.

HISTORY: Laws, 1993, ch. 384, § 1, eff from and after July 1, 1993.

ARTICLE 11.

NATURAL RESOURCES CONSERVATION EDUCATION FUND.

Sec.
69-27-401. Creation of fund; purpose and use of monies in fund.

§ 69-27-401. Creation of fund; purpose and use of monies in fund.

There is created in the State Treasury a special fund to be designated as the “Natural Resources Conservation Education Fund.” The fund shall consist of such monies as are required to be deposited therein under Section 27-19-56.19; any gifts, grants or other contributions from any federal, state or local government or any person, firm or corporation; and such other monies as the Legislature may appropriate or authorize to be deposited into the fund. Monies in the fund may be used upon appropriation by the Legislature, by the

Mississippi Soil and Water Conservation Commission to develop, produce and distribute materials used to educate individuals, groups or both, as to the natural resources of the State of Mississippi and the conservation of such resources.

HISTORY: Laws, 2000, ch. 536, § 9, eff from and after July 1, 2000.

CHAPTER 28.

PROTECTION AND CONSERVATION OF AGRICULTURAL LANDS

Sec.
69-28-1. Legislative purpose and intent.
69-28-3. Definitions.
69-28-5. Qualifications for designation as agricultural district.
69-28-7. Petition for designation or redesignation of an agricultural district.
69-28-9. Procedures, limitations and responsibilities of agricultural districts.
69-28-11. Soil and water conservation district.

§ 69-28-1. Legislative purpose and intent.

It is the intent and purpose of the Legislature to encourage the conservation, protection and responsible utilization of lands that are managed for purposes of agricultural production. It is recognized that such lands are finite, fragile and valuable resources that contribute economically and socially to the well-being of the State of Mississippi. It is also recognized that these lands are subject to change and conversion from agricultural production as a result of urban expansion, transportation projects, water impoundments, utility expansion and similar land development measures. It is the policy of the Legislature to provide a process for the recognition of lands dedicated to agricultural production and to assure an accurate understanding of the impacts of public policy decisions that might otherwise alter the capability of those lands to remain in agricultural production.

HISTORY: Laws, 1997, ch. 469, § 1, eff from and after July 1, 1997.

§ 69-28-3. Definitions.

As used in this chapter, unless the context clearly indicates otherwise:

(a) "Agricultural production" means those operations including associated land and facility management activities engaged in the commercial propagation, raising, harvesting and/or processing of any plant or animal or products thereof for the purposes of consumption, utilization, goods or services either on-site or for distribution.

(b) "Farmland" means land and associated facilities involved in agricultural production activities.

(c) "Agricultural district" means those properties residing within a contiguous boundary and meeting appropriate criteria for designation as such by the local soil and water conservation district.

(d) "Soil and water conservation district" means that governmental body established by Section 69-27-15 et seq.

(e) "State Soil and Water Conservation Commission" means that governmental body established by Section 69-27-2 et seq.

(f) "District commissioners" means the governing body of the local soil and water conservation district.

(g) "Ownership" means any individual, family, company, corporation or organization holding title to property within a proposed or established agricultural district.

(h) "Petition" means the application and the application process for designation of an agricultural district as submitted to the local soil and water conservation district.

HISTORY: Laws, 1997, ch. 469, § 2, eff from and after July 1, 1997.

§ 69-28-5. Qualifications for designation as agricultural district.

(a) To qualify for designation as an agricultural district, a district shall initially contain at least fifty (50) contiguous acres and may include any number of individual property ownerships; however, no single ownership shall contain less than fifteen (15) acres.

(b) Agricultural districts shall include only ownerships engaged in agricultural production.

(c) Before designation of an agricultural district, landowners must submit a petition to the local soil and water conservation district commissioners requesting designation of an agricultural district. The petition shall include the following information:

(i) A general description of the proposed agricultural district including total number of ownerships, total acreage, land use information, social and economic information about the respective area of the county and potential impacts on development of agricultural production;

(ii) Location of the proposed agricultural district boundary on a standard United States Geological Survey Quadrangle map (1:2000 scale);

(iii) Location of the proposed agricultural district boundary on the local county tax assessor map including location and identification of each ownership within the agricultural district as well as identification of all ownerships adjacent to the agricultural district;

(iv) A description of the type and extent of agricultural production activity for each ownership within the proposed agricultural district;

(v) Other pertinent information as the local soil and water conservation district commissioners may require to evaluate the petition.

(d) Individual ownership participation in an agricultural district is entirely voluntary, and no land shall be included in the agricultural district without the consent of the owner.

(e) Upon receipt of a petition the local soil and water conservation district commissioners shall notify the county board of supervisors and/or any local or regional planning or zoning body that may apply by sending a copy of the petition to such body.

(f) In evaluating a petition for the establishment of an agricultural district the local soil and water conservation district commissioners shall consider the following:

(i) The capability of the land to support continued agricultural production as indicated by soil conditions, climate, topography and other natural conditions;

(ii) The ability of the local, regional, state and international markets to support continued agricultural production; and

(iii) Any matter which might be relevant to evaluation of the petition.

HISTORY: Laws, 1997, ch. 469, § 3, eff from and after July 1, 1997.

§ 69-28-7. Petition for designation or redesignation of an agricultural district.

(a) Upon review of a petition, the local soil and water conservation district commissioners may approve designation of an agricultural district. A designated agricultural district shall be established for a period of five (5) years and reviewed for redesignation every five (5) years thereafter. However, the soil and water conservation district may review the status of designation at any time upon the written request and justification of the respective county board of supervisors, city board of aldermen, city council, city selectmen, city commissioners, city manager or mayor or upon a decision of the district commissioners that such a review is appropriate. The soil and water conservation district commissioners may sustain or repeal designation of an agricultural district based upon the following:

(i) The continued viability of the agricultural district. An agricultural district may become reduced in acreage based upon the voluntary withdrawal of any of the ownerships. However, the agricultural district shall cease to exist if the total acreage drops below twenty (20) acres;

(ii) The impacts and consequences of proposed land development; and

(iii) Other factors that the district commissioners may find relevant.

(b) Any ownership, or any successor heir of the ownership, within an agricultural district may withdraw from the agricultural district upon notifying the local soil and water conservation district in writing.

(c) Landowners may submit or resubmit petitions for designation or redesignation at any time to the local soil and water conservation district.

(d) If a petition is rejected or the local soil and water conservation district commissioners repeal designation of an agricultural district, the ownerships within the agricultural district may appeal the decision of the district commissioners to the State Soil and Water Conservation Commission. Based upon a review of all relevant information and following a public hearing, the State Soil and Water Conservation Commission may either sustain or overturn the decision of the local soil and water conservation district.

HISTORY: Laws, 1997, ch. 469, § 4, eff from and after July 1, 1997.

§ 69-28-9. Procedures, limitations and responsibilities of agricultural districts.

Upon establishment of an agricultural district, the following procedures, limitations and responsibilities shall apply:

(a) Any ownership within an agricultural district that has received a notice of condemnation proceedings against its property may request the local soil and water conservation district to conduct a public hearing to review the project's impact on that property. Such public hearing shall be held within forty-five (45) calendar days of the receipt of such summons of condemnation proceedings.

(b) The local soil and water conservation district with assistance of the State Soil and Water Conservation Commission shall provide appropriate notification about establishment of the agricultural district to local and state government agencies, local media and other communication networks. The soil and water conservation district shall also issue appropriate certificates of recognition to the respective ownerships within the agricultural district.

(c) The local soil and water conservation district, in cooperation with the local road manager, or his counterpart, as well as the Mississippi Department of Transportation, may erect signs as may be appropriate to recognize a designated agricultural district.

HISTORY: Laws, 1997, ch. 469, § 5, eff from and after July 1, 1997.

Cross References — Eminent domain proceedings, see Miss. Rule of Civ. Proc. 81.

§ 69-28-11. Soil and water conservation district.

An agricultural district may be comprised of ownerships residing in more than one (1) soil and water conservation district as long as the conditions of a contiguous boundary are satisfied. In such case, each soil and water conservation district shall have the responsibility to meet the requirements of this chapter within the county of its jurisdiction.

HISTORY: Laws, 1997, ch. 469, § 6, eff from and after July 1, 1997.

CHAPTER 29.

LIVESTOCK BRANDS, THEFT OR LOSS OF LIVESTOCK AND PROTECTIVE ASSOCIATIONS

Article 1.	General Provisions.	69-29-1
Article 3.	Registration and Ownership of Livestock Brands.	69-29-101
Article 5.	Protective Associations.	69-29-201
Article 7.	Animal Research or Exhibiting Facility.	69-29-301

ARTICLE 1.

GENERAL PROVISIONS.

Sec.	
69-29-1.	Mississippi Agricultural and Livestock Theft Bureau established; director; employment of investigators; powers, duties and authority of director; vehicles, equipment and supplies; cooperation and assistance of other agencies; timber product defined; timber products theft investigation.
69-29-2.	License requirement of persons who transfer or sell certain animals for research.
69-29-3.	Prohibition as to marking or branding of animals with intent to deprive owner of property.
69-29-5.	Prohibition as to altering or defacing of brands or marks without owner's consent.
69-29-7.	Butchers and dealers to keep register of brands and marks; penalty for violation.
69-29-9.	Branding, misbranding or mismarking cattle or swine with intent to defraud; penalty.
69-29-11.	Regulations as to transportation of livestock; penalty for violation.
69-29-13.	Mortgaged cattle; notice of loss of same.
69-29-15.	Unlawful removal of any collar, tag, or marking device on an animal without permission of owner; penalties.

§ 69-29-1. Mississippi Agricultural and Livestock Theft Bureau established; director; employment of investigators; powers, duties and authority of director; vehicles, equipment and supplies; cooperation and assistance of other agencies; timber product defined; timber products theft investigation.

(1)(a) There is established the Mississippi Agricultural and Livestock Theft Bureau.

(b) The Commissioner of Agriculture and Commerce shall appoint a director of the Mississippi Agricultural and Livestock Theft Bureau. Such director shall have at least five (5) years of law enforcement experience. Such director shall be responsible solely to the supervision of the Commissioner of Agriculture and to no other person or entity. Such director may be discharged only for just cause shown.

(c) The director may employ twelve (12) agricultural and livestock theft investigators. Each investigator shall be certified as a law enforcement officer, successfully completing at least a nine-week training course, in accordance with Section 45-6-11. The curriculum for the training of constables shall not be sufficient for meeting the certification requirements of this paragraph. In the selection of investigators under this section, preference shall be given to persons who have previous law enforcement experience.

(d) The director appointed under this section, under the direction, control and supervision of the commissioner, and the investigators employed under this section shall perform only the duties described in subsection (2) of this section and shall not be assigned any other duties.

(2) The director appointed under this section and the investigators employed under this section shall have the following powers, duties and authority:

(a) To enforce all of the provisions of Sections 69-29-9 and 69-29-11, and particularly those portions requiring persons transporting livestock to have a bill of sale in their possession; to make investigations of violations of such sections and to arrest persons violating same;

(b) To enforce all of the laws of this state enacted for the purpose of preventing the theft of livestock, poultry, timber and agricultural, aquacultural and timber products and implements; to make investigations of violations thereof and to arrest persons violating same;

(c) To cooperate with all regularly constituted law enforcement officers relative to the matters herein set forth;

(d) To serve warrants and other process emanating from any court of lawful jurisdiction, including search warrants, in all matters herein set forth;

(e) To carry proper credentials evidencing their authority, which shall be exhibited to any person making demand therefor;

(f) To make arrests without warrant in all matters herein set forth in cases where same is authorized under the constitutional and general laws of this state;

(g) To handle the registration of brands of cattle and livestock;

(h) To investigate, prevent, apprehend and arrest those persons anywhere in the state who are violating any of the laws administered by the Department of Agriculture and Commerce, including, but not limited to, all agriculture-related crimes;

(i) To access and examine records of any person, business or entity that harvests, loads, carries, receives or manufactures timber products as defined in this section. Each such person or entity shall permit the director or any investigator of the Mississippi Agricultural and Livestock Theft Bureau to examine records of the sale, transfer or purchase of timber or timber products, including, but not limited to, contracts, load tickets, settlement sheets, drivers' logs, invoices, checks and any other records or documents related to an ongoing investigation of the Mississippi Agricultural and Livestock Theft Bureau;

(j) To conduct training for law enforcement regarding laws enforced by the bureau and to assist any other law enforcement agencies in responding to matters that may be related to agriculture and commerce in the State of Mississippi and in cases of natural disasters or other disasters to respond as needed or as requested by other agencies.

(3) The Commissioner of Agriculture and Commerce shall furnish such investigators with such vehicles, equipment and supplies as may be necessary. All expenses of same, and all other expenses incurred in the administration of this section, shall be paid from such appropriation as may be made by the Legislature.

(4) The Mississippi Department of Revenue and its agents and employees shall cooperate with such investigators by furnishing to them information as to any possible or suspected violations of any of the laws mentioned herein, including specifically Section 69-29-27, and in any other lawful manner.

(5) The conservation officers of the Department of Wildlife, Fisheries and Parks are authorized to cooperate with and assist the agricultural and livestock theft investigators in the enforcement and apprehension of violators of laws regarding agricultural and livestock theft.

(6) The Mississippi Forestry Commission employees are excluded from any timber and timber products theft investigative responsibilities except when technical expertise is needed and requested through the State Forester or his designee.

(7) For the purposes of this section, "timber product" means timber of all kinds, species or sizes, including, but not limited to, logs, lumber, poles, pilings, posts, blocks, bolts, cordwood and pulpwood, pine stumpwood, pine knots or other distillate wood, crossties, turpentine (crude gum), pine straw, firewood and all other products derived from timber or trees that have a sale or commercial value.

HISTORY: Codes, 1942, § 2025.5; Laws, 1950, ch. 394, §§ 1-4; Laws, 1952, ch. 168, § 1, 2 (¶¶ 1 and 2); Laws, 1962, ch. 154; Laws, 1974, ch. 569, § 22; Laws, 1993, ch. 508, § 1; Laws, 1997, ch. 450, § 1; Laws, 1998, ch. 386, § 1; Laws, 2004, ch. 419, § 1, eff from and after July 1, 2004; Laws, 2020, ch. 417, § 2, eff from and after July 1, 2020.

Editor's Notes — Laws of 1993, ch. 508, § 13, effective July 1, 1993, provides as follows:

"SECTION 13. It is the intent of the Legislature that the Department of Public Safety shall assist the Mississippi Agricultural and Livestock Theft Bureau until such time as the Bureau is fully funded and operational."

Amendment Notes — The 2020 amendment, in (1)(c), rewrote the first sentence, which read: "The director may employ nine (9) agricultural and livestock theft investigators, one (1) from each highway patrol district, and each investigator is required to reside within the highway patrol district from which he or she is selected"; in (2), added (j) and made related minor punctuation changes; and in (4), substituted "Department of Revenue" for "State Tax Commission."

Cross References — Conservation officers authorized to assist in the detection and apprehension of violators of laws pertaining to theft of cattle, see § 49-1-44.

Mississippi Agriculture and Commerce Commissioner, see §§ 69-1-1 et seq.

Tranquilizers or drugs for livestock, see §§ 69-17-101 et seq.

Brands, marks, and transporting cattle, see §§ 69-29-9 et seq.
Brands in general, see §§ 69-29-101 et seq.
Petit larceny, see § 97-17-43.
Trespass less than larceny, see § 97-17-61.

OPINIONS OF THE ATTORNEY GENERAL

Mississippi Agricultural and Livestock Theft Bureau investigators have the authority to execute a grand jury capias and arrest defendants indicted for violations of Section 69-29-1 et seq. Spell, Apr. 11, 2003, A.G. Op. #03-0166.

RESEARCH REFERENCES

ALR.

What circumstances fall within "inevitable discovery" exception to rule precluding admission, in criminal case, of evidence obtained in violation of Federal Constitution. 81 A.L.R. Fed. 331.

CJS.

3B C.J.S., Animals §§ 35 et seq.

§ 69-29-2. License requirement of persons who transfer or sell certain animals for research.

(1) Every person, firm, association or corporation, before seeking to sell or transfer dogs or cats, or both, for research, shall obtain a license from the Director of the Mississippi Agricultural and Livestock Theft Bureau. The fee and requirements for such license shall be set by the Director of the Mississippi Agricultural and Livestock Theft Bureau. Application for such license shall be made on forms prescribed and furnished by the director. Such license shall be nontransferable, renewable annually. A new license shall be issued if there is any change in the location or ownership of the business.

(2) At the time application is made for a license under subsection (1) of this section and before the issuance of such license by the Director of the Mississippi Agricultural and Livestock Theft Bureau, the applicant shall file with the director a bond in the penal sum of Five Thousand Dollars ($5,000.00) payable to the State of Mississippi with surety to be approved by the Secretary of State for the faithful performance of the requirements of this section. Evidence shall be supplied to the director annually, at the time license is renewed, that the bond continues in force and effect. In the event the bond is cancelled or will not be renewed, the bonding company shall notify the director in writing at least thirty (30) days before the cancellation of such bond. If a bond is cancelled or fails to be renewed, the license issued under this section shall stand void automatically. The license shall not stand void if a new bond as required herein is filed with the director before the expiration date of the original bond.

(3) The following information shall be recorded by every person, firm, association or corporation licensed under this section for each dog or cat received, sold or transferred under the provisions of this section:

(a) The name, address and telephone number of the person, firm, association or corporation from whom each dog or cat was received and to whom each dog or cat was delivered.

(b) A complete description of each dog or cat received, sold or transferred, including a photograph of each side of the animal.

(c) Any other information as required by the Director of the Mississippi Agricultural and Livestock Theft Bureau.

(4) The Director of the Mississippi Agricultural and Livestock Theft Bureau shall promulgate rules and regulations necessary to effectuate the provisions of this section.

(5) Any person violating the provisions of this section, upon conviction for a first violation, shall be punished by a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00) or by imprisonment in the county jail for not more than six (6) months, or by both. Any person violating the provisions of this section, upon conviction for a second or subsequent violation, shall be punished by imprisonment in the Penitentiary for not less than one (1) year or a fine of not less than One Thousand Dollars ($1,000.00), or by both. Any person who holds a license issued under this section who is convicted of any violation of this section, shall have his license revoked for a minimum of one (1) year.

HISTORY: Laws, 1994, ch. 605, § 1, eff from and after July 1, 1994.

§ 69-29-3. Prohibition as to marking or branding of animals with intent to deprive owner of property.

If any person, knowingly, shall mark or brand any animal, the property of another, with a mark or brand calculated or intended to designate ownership not that of the owner, without the consent of the owner, or without authority of law, and with intent to deprive the owner of his property, he shall, on conviction thereof, be imprisoned, in the penitentiary not more than three years, or be fined in a sum not more than five hundred dollars, or imprisoned in the county jail for a period not longer than one year, or both.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 7 (16); 1857, ch. 64, art. 30; 1871, § 2508; 1880, § 2723; 1892, § 977; 1906, § 1053; Hemingway's 1917, § 781; 1930, § 797; 1942, § 2022.

Cross References — Brands, marks, and transporting cattle, see §§ 69-29-9 et seq.

Brands in general, see §§ 69-29-101 et seq.

Theft of livestock as larceny, see § 97-17-53.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Larceny is not a constituent offense of the crime defined by this section. Cook v. State, 77 Miss. 800, 27 So. 605, 1900 Miss. LEXIS 9 (Miss. 1900).

The statute is not unconstitutional because the crime may be punished as either a felony or a misdemeanor. Murrah v. State, 51 Miss. 652, 1875 Miss. LEXIS 90 (Miss. 1875).

RESEARCH REFERENCES

CJS.
3A C.J.S., Animals §§ 24 et seq.

§ 69-29-5. Prohibition as to altering or defacing of brands or marks without owner's consent.

If any person shall knowingly alter or deface the brand or mark of any animal, intended to designate ownership, the property of another, without his consent, and with intent to deprive the owner of his property, he shall, on conviction, suffer the penalty provided in Section 69-29-3.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 7 (15); 1857, ch. 64, art. 31; 1871, § 2509; 1880, § 2724; 1892, § 978; 1906, § 1054; Hemingway's 1917, § 782; 1930, § 798; 1942, § 2023.

Cross References — Branding of animals, generally, see §§ 69-29-101 et seq.

JUDICIAL DECISIONS

1. In general.
Indictment charging alteration of brand was defective for the reason that it failed to charge that the mark altered by the defendant was "intended to designate ownership". Smith v. State, 121 Miss. 37, 83 So. 337, 1919 Miss. LEXIS 144 (Miss. 1919).

RESEARCH REFERENCES

CJS.
3B C.J.S., Animals §§ 35 et seq.

§ 69-29-7. Butchers and dealers to keep register of brands and marks; penalty for violation.

Every butcher or dealer in cattle, sheep, or hogs, who shall fail to enter in a book or register the names of all persons for whom he buys, and a description by marks, brands, and otherwise of all animals bought or kept by him for slaughter, or to allow an inspection of such entries at any time, by any person interested to make it, shall, on conviction, be imprisoned in the county jail not exceeding six months, or be fined one hundred dollars, or both.

HISTORY: Codes, 1880, § 2726; 1892, § 979; 1906, § 1055; Hemingway's 1917, § 783; 1930, § 799; 1942, § 2024.

Cross References — Registration of brands by owners of livestock, see §§ 69-29-105 et seq.

JUDICIAL DECISIONS

1. In general.

Indictment charging that accused, being a dealer in livestock, unlawfully failed to keep any record of stock bought and sold, and did not enter names of all persons from whom he bought stock, and a description by marks and brands or otherwise of all animals bought is sufficient. State v. Edwards, 115 Miss. 704, 76 So. 635, 1917 Miss. LEXIS 253 (Miss. 1917).

§ 69-29-9. Branding, misbranding or mismarking cattle or swine with intent to defraud; penalty.

Any person who shall, with intent to defraud, brand or mis-brand, mark or mismark any neat cattle or swine not his own; or any person who shall intentionally brand over a previous brand or in any manner alter, deface or obliterate a previous brand or earmark, or shall cut out and obliterate a previous brand or earmark on any neat cattle or swine, shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state penitentiary not less than six months nor more than one year.

HISTORY: Codes, 1942, § 2025; Laws, 1936, ch. 294.

Cross References — Unlawful acts relating to brands, generally, see § 69-29-117.

JUDICIAL DECISIONS

1. In general.

An instruction that every dealer in cattle is required when selling cattle to give to the buyer a bill of sale, having the signature and the address of the buyer and the date of sale and delivery, was properly refused, because this instruction adds nothing to the information of the jury relevant to the issue of the guilt vel non of the defendant. Lucas v. State, 211 Miss. 339, 51 So. 2d 583, 1951 Miss. LEXIS 361 (Miss. 1951).

The action of sheriff who after spying a cow in truck on highway one quarter of a mile ahead, overtook the truck, asked defendant occupants if they had a bill of sale to cattle therein, and upon receiving negative answer and unsatisfactory explanation as to identification of alleged seller and the presence of cattle, took the defendants into custody, did not constitute an unlawful search and seizure. Huggins v. State, 209 Miss. 552, 47 So. 2d 852, 1950 Miss. LEXIS 413 (Miss. 1950).

In prosecution for grand larceny of cattle, testimony of witness accompanying sheriff on patrolling expedition investigating cattle theft that the sheriff asked the defendants about a bill of sale of other cattle not covered by previous examination of witness was not prejudicial where court admonished the jury to disregard the question, and where the cross-examination of defendants disclosed the facts of other similar thefts in same neighborhood, including theft of cattle belonging to witnesses, and the failure of defendants to exhibit bill of sale. Huggins v. State, 209 Miss. 552, 47 So. 2d 852, 1950 Miss. LEXIS 413 (Miss. 1950).

RESEARCH REFERENCES

CJS.

3B C.J.S., Animals §§ 36 et seq.

§ 69-29-11. Regulations as to transportation of livestock; penalty for violation.

For any person to haul, transport or carry any livestock upon and over the public highways, roads and streets of this state by means of a motor vehicle or other vehicle drawn or propelled by a motor vehicle, such person shall have in his possession a bill of sale showing: (i) from whom such livestock was purchased; (ii) description of such livestock, with brands or earmarks, if any; (iii) signature and address of the seller; and (iv) the date of sale and delivery.

Any sheriff, constable, agricultural and livestock theft investigator or police officer shall have the power to inspect any livestock in the process of transportation upon the highways of Mississippi.

Any person who shall violate any provisions of this section, or Section 69-29-9, shall be deemed guilty of a misdemeanor and, upon conviction therefor, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), and by imprisonment in the county jail not less than thirty (30) days nor more than six (6) months. Any person convicted of stealing livestock is subject to the penalties provided in Section 97-17-53.

HISTORY: Codes, 1942, § 2025; Laws, 1936, ch. 294; Laws, 1993, ch. 508, § 2, eff from and after July 1, 1993.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

An instruction that every dealer in cattle is required when selling cattle to give to the buyer a bill of sale, having the signature and the address of the buyer and the date of sale and delivery, was properly refused, because this instruction adds nothing to the information of the jury relevant to the issue of the guilt vel non of the defendant. Lucas v. State, 211 Miss. 339, 51 So. 2d 583, 1951 Miss. LEXIS 361 (Miss. 1951).

The action of sheriff who after spying a cow in truck on highway one quarter of a mile ahead, overtook the truck, asked defendant occupants if they had a bill of sale to cattle therein, and upon receiving negative answer and unsatisfactory explanation as to identification of alleged seller and the presence of cattle, took the defendants into custody, did not constitute an unlawful search and seizure. Huggins v. State, 209 Miss. 552, 47 So. 2d 852, 1950 Miss. LEXIS 413 (Miss. 1950).

In prosecution for grand larceny of cattle, testimony of witness accompanying sheriff on patrolling expedition investigating cattle theft that the sheriff asked the defendants about a bill of sale of other cattle not covered by previous examination of witness was not prejudicial where court admonished the jury to disregard the question, and where the cross-examination of defendants disclosed the facts of other similar thefts in same neighborhood, including theft of cattle belonging to witnesses, and the failure of defendants to exhibit bill of sale. Huggins v. State, 209 Miss. 552, 47 So. 2d 852, 1950 Miss. LEXIS 413 (Miss. 1950).

RESEARCH REFERENCES

Am. Jur.
2 Am. Jur. Legal Forms 2d, Animals, § 20:18 (bill of sale for branded cattle).

§ 69-29-13. Mortgaged cattle; notice of loss of same.

The owner of any cattle or stock which shall be mortgaged shall, within thirty days, give notice to the mortgagee of the death, theft or estray of any animal included in the lien created by said mortgage, if the mortgagor has knowledge of the death, theft or estray, and any owner who shall fail to give such notice shall be guilty of a misdemeanor and shall upon conviction, be fined not less than Fifty Dollars ($50.00) nor more than Two Hundred Dollars ($200.00) or be imprisoned in the county jail for not more than sixty (60) days, or both.

HISTORY: Codes, Hemingway's 1917, § 1565; 1930, § 5473; 1942, § 4901; Laws, 1916, ch. 117.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 69-29-15. Unlawful removal of any collar, tag, or marking device on an animal without permission of owner; penalties.

It shall be unlawful for a person to remove any collar, tag or marking device on any animal not owned by such person and without the permission of the owner of the animal. Any person violating the provisions of this section, upon conviction for a first violation, shall be punished by a fine of not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00) or by imprisonment in the county jail for not more than six (6) months, or by both. Any person violating the provisions of this section, upon conviction for a second or subsequent violation, shall be punished by imprisonment in the Penitentiary for not less than one (1) year or a fine of not less than One Thousand Dollars ($1,000.00), or by both.

HISTORY: Laws, 1994, ch. 605, § 2, eff from and after July 1, 1994.

ARTICLE 3.

REGISTRATION AND OWNERSHIP OF LIVESTOCK BRANDS.

Sec.
69-29-101. Purpose of article.
69-29-103. Definitions.
69-29-105. Registration and ownership of brands; transfer of registration and ownership; penalties for violation.

Sec.
69-29-107. Copy of certificate of registration as evidence.
69-29-109. Reregistration and renewal of brands.
69-29-111. Forms; register of brands.
69-29-113. Livestock market operators and hide dealers to keep records.
69-29-115. Rules and regulations.
69-29-117. Unlawful acts.
69-29-119. Minor owner may have separate brands.
69-29-121. Penalty for violations.

§ 69-29-101. Purpose of article.

The purpose of this article is to provide a place for registration of brands or marks of cattle and other livestock in an appropriate bureau, which may be called the Mississippi Agricultural and Livestock Theft Bureau, in the Department of Agriculture and Commerce under the Commissioner of Agriculture and Commerce of the State of Mississippi, in order to avoid confusion as to brands or marks of cattle and other livestock, and to protect the owners against theft, and to aid the agricultural and livestock theft investigators in the Department of Agriculture and Commerce in tracing such cattle and other livestock when stolen, apprehending such thieves and returning the cattle and other livestock to the owner thereof.

HISTORY: Codes, 1942, § 4896-02; Laws, 1952, ch. 173, § 2; Laws, 1993, ch. 508, § 3, eff from and after July 1, 1993.

Cross References — Crimes involving brands and transporting of livestock, see §§ 69-29-1 et seq.

§ 69-29-103. Definitions.

The following words, or similar words, when used in this article shall have the following meaning unless the context clearly indicates otherwise:

(a) "Commissioner" means the Commissioner of Agriculture and Commerce of the State of Mississippi, under whose supervision this article is placed.

(b) "Bureau" means the Mississippi Agricultural and Livestock Theft Bureau, or its successor, in the Department of Agriculture and Commerce, under the administration of the Commissioner of Agriculture and Commerce for the apprehending of cattle and other livestock thieves.

(c) "Brand" means any recorded identification mark applied to any position on the hide of a live animal by means of heat, acid or chemical.

(d) "Person" means any individual, partnership, association or corporation.

(e) "Livestock" means horses, cattle, swine, sheep, poultry and other domestic or exotic animals, birds or fish produced for profit.

(f) "Livestock market" means any place at which a person assembles livestock either for public or private sale by him, such services to be compensated for by the owner on a commission basis or otherwise, or where such person purchases livestock for resale, except:

(i) Any place other than at a permanently established livestock market used solely for the dispersal sale of the livestock of a farmer, dairyman, livestock breeder or feeder who is discontinuing said business and no other livestock is there sold or offered for sale;

(ii) Any farm, ranch, or place where livestock either raised or kept thereon for the grazing season or for fattening is sold, and no other livestock is brought there for sale or offered for sale;

(iii) The premises of any person engaged in the raising of livestock for breeding purposes only, who limits his or its sale to animals of his or its own production;

(iv) Any place where a breeder or an association of breeders of livestock of any class assemble and offer for sale and sell under his or their own management any livestock, when such breeder or association of breeders shall assume all responsibility of such sale and the title of livestock sold.

(g) "Mark" means a distinct marking or device placed on a live animal sufficient to distinguish the animal readily if it becomes intermixed with other animals, and includes a tattoo.

HISTORY: Codes, 1942, § 4896-01; Laws, 1952, ch. 173, § 1, eff July 1, 1952; Laws, 1993, ch. 508, § 4, eff from and after July 1, 1993.

Cross References — Mississippi Agriculture and Commerce Commissioner, see §§ 69-1-1 et seq.

Crimes involving brands and transporting of livestock, see § 69-29-3.

Fraud in obtaining registration of animals, see § 97-19-49.

RESEARCH REFERENCES

CJS.

3B C.J.S., Animals §§ 35 et seq.

§ 69-29-105. Registration and ownership of brands; transfer of registration and ownership; penalties for violation.

(1) Any cattle or other livestock owner, who uses or desires to use and adopt a brand or mark to identify his livestock must register his brand or mark by making application for such registration to the Department of Agriculture and Commerce. Not only all livestock owners who have their cattle branded before this law goes into effect must apply for registration, but also those persons who desire to brand or mark their livestock for the first time must apply for registration, and submit their proposed brand or mark to the department for clearing before it is applied. The application shall be made on forms prescribed and furnished by the department, which application shall be accompanied by a fee of Five Dollars ($5.00) and a facsimile of the brand or mark or proposed brand or mark to be registered shall also be furnished by the applicant. All fees collected hereunder for registration, transfer, or reregistration of brands or marks shall be deposited in the State Treasury. If the brand or mark described in the application has not previously been registered by

another cattle owner, or does not closely resemble a registered brand or mark, the department shall approve the application, register the brand or mark in the name of the applicant, and issue to the applicant a certificate of registration. In case of duplication of brands or marks as shown by applications, the owner of the brand or mark who first records with the department will be recognized. When a livestock owner, who has registered a brand or mark with the department, transfers such brand or mark to another person, he shall immediately notify the department of the transfer, giving the date of transfer, and the name and address of the transferee. Upon receipt of the notice and a transfer fee of Two Dollars ($2.00), the department shall cause such transfer to be noted in the register of brands and marks, and such brand or mark shall not be used by the new owner until permission has been given by the department for the use of such brand or mark.

(2) No two (2) or more brands or marks of the same design or figure, and no two (2) or more earmarks of the same kind shall be adopted, designed and recorded, and when a brand, mark or earmark shall have been designed, adopted and recorded, the person so adopting and recording same shall be entitled to the exclusive use thereof, and it shall be his exclusive property, but the right to the use of such brand or mark may be sold and transferred by an instrument in writing, signed, acknowledged and recorded in the chancery clerk's office of the county where the brand, mark or earmark is recorded. When the right to the use of a brand, mark or earmark has been sold and transferred and recorded as herein provided, the chancery clerk shall note on the "brand, mark and earmark book" that such brand, mark or earmark has been sold and transferred, giving the book and page where such transfer is recorded.

(3) Any person who shall violate any of the provisions of subsection (2) of this section shall be deemed guilty of a misdemeanor and, upon conviction therefor, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), and by imprisonment in the county jail not less than thirty (30) days nor more than six (6) months. Any person convicted of stealing livestock is subject to the penalties provided in Section 97-17-53.

HISTORY: Codes, 1942, §§ 2025, 4896-03; Laws, 1936, ch. 294; Laws, 1952, ch. 173, § 3; Laws, 1976, ch. 342, § 1; Laws, 1993, ch. 508, § 5, eff from and after July 1, 1993.

Cross References — Fraud in obtaining registration of animals, see § 97-19-49.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

An instruction that every dealer in cattle is required when selling cattle to give to the buyer a bill of sale, having the signature and the address of the buyer and the date of sale and delivery, was properly refused, because this instruction adds nothing to the information of the jury relevant to the issue of the guilt vel non of the defendant. Lucas v. State, 211 Miss. 339, 51 So. 2d 583, 1951 Miss. LEXIS 361 (Miss. 1951).

The action of sheriff who after spying a cow in truck on highway one quarter of a mile ahead, overtook the truck, asked defendant occupants if they had a bill of sale to cattle therein, and upon receiving negative answer and unsatisfactory explanation as to identification of alleged seller and the presence of cattle, took the defendants into custody, did not constitute an unlawful search and seizure. Huggins v. State, 209 Miss. 552, 47 So. 2d 852, 1950 Miss. LEXIS 413 (Miss. 1950).

In prosecution for grand larceny of cattle, testimony of witness accompanying sheriff on patrolling expedition investigating cattle theft that the sheriff asked the defendants about a bill of sale of other cattle not covered by previous examination of witness was not prejudicial where court admonished the jury to disregard the question, and where the cross-examination of defendants disclosed the facts of other similar thefts in same neighborhood, including theft of cattle belonging to witnesses, and the failure of defendants to exhibit bill of sale. Huggins v. State, 209 Miss. 552, 47 So. 2d 852, 1950 Miss. LEXIS 413 (Miss. 1950).

RESEARCH REFERENCES

CJS.
3B C.J.S., Animals §§ 35 et seq.

§ 69-29-107. Copy of certificate of registration as evidence.

In all suits at law or in equity, or in any criminal proceedings when the title or right of possession is involved, a copy of the certificate of brand or mark registration verified by affidavit of the department shall be received in evidence by the court as evidence of the registration of such brand or mark in accordance with the requirements of this article.

HISTORY: Codes, 1942, § 4896-04; Laws, 1952, ch. 173, § 4, eff July 1, 1952; Laws, 1993, ch. 508, § 6, eff from and after July 1, 1993.

§ 69-29-109. Reregistration and renewal of brands.

All brands or marks of cattle and other livestock, upon being registered with the department shall be reregistered once every five (5) years thereafter. Those brands or marks which have been filed and recorded in the Office of the Secretary of State after January 1, 1946, give the owner priority to the use of such brand or mark, and in event of duplication, the brand or mark first filed with the Secretary of State shall have priority over any same or similar brand or mark filed with the Secretary of State thereafter.

After July 1, 1952, it shall be necessary for all such owners of brands or marks who have filed and recorded brands or marks in the Office of the Secretary of State after January 1, 1946, to reregister any and all such brands or marks with the department, and pay the necessary registration fee. Brands or marks recorded in the Office of the Secretary of State before January 1, 1946, are not recognized for the purpose of priority, because of the confused state of the records. After the registration of such brands or marks with the department, they must be reregistered not later than five (5) years thereafter, or ownership thereto will be lost.

All brands or marks registered after July 1, 1952, shall be reregistered on or before five (5) years after the date of registration. Upon the transfer of any such brand or mark, notice of such transfer shall be furnished the department by the transferor, and the department shall keep a record of all such transfers.

At least ninety (90) days before the renewal date for all brands or marks, the department shall notify all persons having brands or marks registered of the date on which such brand or mark must be renewed. On or before the renewal date of all brands or marks the registered owner thereof shall pay to the department a renewal fee of Five Dollars ($5.00) and shall furnish such additional information as the department may require on forms to be furnished by the department. If any cattle owner fails to renew any brand or mark registered in his name, such brand or mark shall be forfeited and shall be available to any other applicant.

HISTORY: Codes, 1942, § 4896-05; Laws, 1952, ch. 173 § 5; Laws, 1976, ch. 342, § 2; Laws, 1993, ch. 508, § 7, eff from and after July 1, 1993.

§ 69-29-111. Forms; register of brands.

The Department of Agriculture and Commerce shall prescribe and furnish forms on which applications for registration, reregistration and transfer of brands or marks shall be made and shall furnish such forms to the sheriff and the county agricultural agent of each county of the state to be distributed on request to livestock owners desiring to make application for registration of brands or marks and such applications may also be furnished to applicants by the department. The department shall maintain a complete register of all brands or marks, showing the name and address of the owner, and shall annually publish and distribute copies of this register and supplementary copies thereof to every livestock market and sheriff's office and chancery clerk in the state. Copies of the register of brands and marks may be furnished to other persons requesting such copies, at a price to be determined by the department. Copies of the register of brands and marks shall be published in booklet form. The department shall also determine from its records of registration the ownership of any estrayed cattle and furnish such information to interested persons, upon receipt of notice giving details of the kind of animal, color, weight, size, sex, age, marks, brands and other identifying information.

HISTORY: Codes, 1942, § 4896-06; Laws, 1952, ch. 173, § 6; Laws, 1993, ch. 508, § 8, eff from and after July 1, 1993.

Cross References — Estrays, generally, see §§ 69-13-301 et seq.

§ 69-29-113. Livestock market operators and hide dealers to keep records.

(1) Every operator of a livestock market where livestock is sold shall keep a copy of the register of brands and marks in his place of business where it will be easily accessible for public inspection.

(2) The operator of every livestock market where livestock is sold, together with all dealers, slaughterers and butchers who buy livestock for slaughter which was not purchased at a livestock market, shall keep a record covering all livestock received, including:

(a) The name and address of the owner of the livestock;

(b) The license tag number of the vehicle delivering the livestock;

(c) The name and address of the driver of the vehicle delivering the livestock and his motor vehicle operator's license number or Social Security number, preferably both;

(d) The number of livestock received; and

(e) A description of livestock including color.

These records shall be kept for public inspection for a period of two (2) years after the livestock is received.

(3) Livestock hide dealers are required to keep a record of all hides of livestock received by them, including:

(a) The name and address of the owner of the hides;

(b) The vehicle tag number of the vehicle delivering the hides;

(c) The name and address of the driver of the vehicle and his motor vehicle operator's license number or Social Security number, preferably both; and

(d) A description of the hides, including any brands or marks.

Livestock hide dealers shall keep such records for a period of two (2) years from the time of purchase.

(4) Any livestock market operator, dealer, slaughterer, butcher or livestock hide dealer who fails to keep these records and make them available to authorized inspectors or officers of the law shall be fined not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00).

HISTORY: Codes, 1942, § 4896-07; Laws, 1952, ch. 173, § 7; Laws, 1971, ch. 491, § 2; Laws, 1993, ch. 508, § 9, eff from and after July 1, 1993.

§ 69-29-115. Rules and regulations.

The Department of Agriculture and Commerce shall have authority to promulgate such rules and regulations as are reasonably necessary to carry out the intent and purpose of this article and that shall facilitate the tracing and identification of livestock and afford protection against stealing and unlawful dealing in livestock.

Any driver moving livestock from any advertised sale shall have a bill of sale or other written evidence of purchase for the livestock in his possession, to be shown on request of any duly authorized law enforcement officer and to be delivered to the purchaser with delivery of the livestock.

HISTORY: Codes, 1942, § 4896-08; Laws, 1952, ch. 173, § 8; Laws, 1971, ch. 491, § 3; Laws, 1993, ch. 508, § 10, eff from and after July 1, 1993.

§ 69-29-117. Unlawful acts.

It shall be unlawful for:

(a) Any person to use any brand or mark for branding cattle or other livestock unless the brand or mark is registered with the Department of Agriculture and Commerce;

(b) Any person to obliterate, alter or deface the brand or mark of any animals;

(c) Any livestock market to receive and sell livestock unless records of such sale are kept in accordance with the requirements of this article;

(d) Any livestock market to fail to keep a copy of the register of brands and marks furnished to them by the department in a place easily accessible to interested parties;

(e) Any livestock hide dealer to fail or refuse to keep records required by subsection (c) of Section 69-29-113.

HISTORY: Codes, 1942, § 4896-09; Laws, 1952, ch. 173, § 9; Laws, 1993, ch. 508, § 11, eff from and after July 1, 1993.

Cross References — Crimes involving brands and transportation of livestock, see §§ 69-29-1 et seq.

RESEARCH REFERENCES

CJS.
3B C.J.S., Animals §§ 36 et seq.

§ 69-29-119. Minor owner may have separate brands.

Minors owning cattle or stock separate from that of the father or guardian may have a brand and mark, which shall be recorded; the father or guardian shall be responsible for the proper use of such brand and mark of any such minor.

HISTORY: Codes, Hemingway's 1917, § 1561; 1930, § 5469; 1942, § 4897; Laws, 1916, ch. 117.

§ 69-29-121. Penalty for violations.

Any person who violates any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than Twenty-five Dollars ($25.00), nor more than Five Hundred Dollars ($500.00), or by imprisonment for a term of not more than six months, or both, in the discretion of the court.

HISTORY: Codes, 1942, § 4896-10; Laws, 1952, ch. 173, § 10, eff July 1, 1952.

Cross References — Penalties for commission of crimes relating to brands and transportation of livestock, see §§ 69-29-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ARTICLE 5.

PROTECTIVE ASSOCIATIONS.

Sec.
69-29-201. Purposes, organization, powers and duties.
69-29-203. Assistance to sheriff in apprehending thieves; reward.
69-29-205. Reports.

§ 69-29-201. Purposes, organization, powers and duties.

For the purpose of encouraging the production of more and better livestock and poultry in this state, and for the purpose of preventing theft of livestock and poultry by posting cash rewards for the arrest and conviction of livestock and poultry thieves, and requesting the Governor to aid by posting rewards and employing detectives for this purpose, all owners of livestock and poultry and land owners in any county are hereby authorized and encouraged to organize a county livestock and poultry owners protective association, hereinafter referred to as the association. All persons owning land in the county and all persons owning any livestock or poultry in the county are eligible to membership in the association. They shall organize by meeting at the county courthouse, by electing a president of the association and a secretary, and a treasurer, who shall each agree to serve for one year, without pay, when their successors shall be elected. There shall be a board of directors, not to exceed three members from each beat in the county, elected at the same time and in the same manner as the other officers. No legal charter of incorporation shall be necessary. Each county association shall have authority to make and publish its own by-laws and fix the amount of annual dues. The association, being purely voluntary, may disband or continue to function, as the members shall determine. Any association already organized in any county shall be deemed to be lawfully organized for the purpose of this article.

HISTORY: Codes, 1942, § 4908; Laws, 1940, ch. 209; Laws, 1942, ch. 259.

Cross References — Employment of officers for enforcement of laws relating to brands and transportation of livestock, see § 69-29-1.

§ 69-29-203. Assistance to sheriff in apprehending thieves; reward.

When the theft of any livestock or poultry shall be reported to the sheriff of the county where the theft occurred, it shall be the duty of the sheriff to make prompt and diligent effort to arrest the thief or thieves. At the same time, it shall be the duty of the president of the association to assist the sheriff in the capture of the thief or thieves by posting or publishing the standing reward offered by the association for information leading to arrest and conviction of the said thief or thieves, but in case of a theft of poultry no such reward shall be offered by the association where the value of the poultry stolen would amount to a misdemeanor only. When additional assistance may be needed to bring those guilty of the theft of any livestock or poultry to justice, the president of the association, or in his absence or disability, three or more directors of the association may, in their discretion, notify the Governor and request his assistance. When the Governor shall receive such request it shall then be his duty to offer such reward as he may deem proper for arrest and conviction of the said thief or thieves, or for information leading to the arrest and conviction, but such reward shall not exceed Fifty Dollars ($50.00) in any particular case. In case it is impossible to break up livestock and poultry thefts without employment of detectives, then the Governor may, in his discretion, employ a reliable detective to assist the sheriff and the association in any county. The reward to be offered by the Governor and the expense of detectives shall be paid out of the Governor's contingent fund.

HISTORY: Codes, 1942, § 4909; Laws, 1940, ch. 209; Laws, 1942, ch. 259.

§ 69-29-205. Reports.

It shall be the duty of the secretary of each county association to file annually with the Governor a report, countersigned by the president and treasurer of the association, showing the names of all officers and directors, the number of members, the amount of dues collected, the amount paid by the association in rewards, the number of arrests and convictions, the number of thefts of livestock and poultry, and the number stolen and recovered. It shall be the duty of the Governor to report to the Legislature in detail his expenditures from contingent fund, in an itemized statement, and he shall have on file in his office for the information of members of the Legislature the information furnished by the various county associations.

HISTORY: Codes, 1942, § 4910; Laws, 1940, ch. 209; Laws, 1942, ch. 259.

ARTICLE 7.

ANIMAL RESEARCH OR EXHIBITING FACILITY.

Sec.
69-29-301. Short title.
69-29-303. Definitions.
69-29-305. Prohibition against acquisition or exercise of control over animal facility with intent to disrupt or damage enterprise conducted at facility without consent of owner.
69-29-307. Prohibition against damaging or destroying animal or animal facility with intent to disrupt or damage without consent of owner.
69-29-309. Prohibition against entering or remaining concealed in animal facility to commit prohibited act without consent of owner.
69-29-311. Prohibition against entering or remaining in animal facility with intent to disrupt or damage enterprise conducted at facility without consent of owner; notice requirement; definitions.
69-29-313. Applicability.
69-29-315. Penalties for violations.

§ 69-29-301. Short title.

This article may be cited and shall be known as the "Animal Research or Exhibiting Facilities Protection Act."

HISTORY: Law, 1996, ch. 424, § 1, eff from and after July 1, 1996.

§ 69-29-303. Definitions.

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Actor" means a person accused of any of the offenses defined in this article.

(b) "Animal" means a warm or cold-blooded animal used in food or fiber production, agriculture, exhibition, research, testing, experimentation or education, including poultry, fish and insects.

(c) "Animal research or exhibiting facility," hereinafter referred to as an "animal facility," includes a vehicle, building, separately secured yard, pad, pond, enclosure, structure or premises where an animal is kept, shown, handled, housed, exhibited, bred or offered for sale and any building, laboratory, institution, organization or school in which a person or persons are engaged in research, testing, educational or experimental activities or in which any commercial or academic enterprise is using warm-blooded or cold-blooded animals for food or fiber production, agriculture, research, testing, experimentation or education.

(d) "Consent" means assent in fact, whether express or apparent.

(e) "Deprive" means:

(i) To purposely or knowingly withhold an animal or other property from the owner permanently or for such an extended time that a major portion of the value or enjoyment of the animal or property is lost to the owner;

(ii) To restore the animal or other property only upon payment for reward or other compensation; or

(iii) To dispose of an animal or other property in a manner that makes recovery of the animal or property by the owner unlikely.

(f) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(i) Induced by force, threat, false pretenses or fraud;

(ii) Given by a person the actor knows is not legally authorized to act for the owner;

(iii) Given by a person who by reason of youth, mental disease or defect or intoxication is known by the actor to be unable to make reasonable decisions; or

(iv) Given solely to detect the commission of an offense.

(g) "Owner" means a person who has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor.

(h) "Person" means an individual, corporation, association, nonprofit corporation, joint-stock company, firm, trust, partnership, two (2) or more persons having a joint or common interest or other legal entity.

(i) "Possession" means actual care, custody, control or management.

HISTORY: Law, 1996, ch. 424, § 2, eff from and after July 1, 1996.

§ 69-29-305. Prohibition against acquisition or exercise of control over animal facility with intent to disrupt or damage enterprise conducted at facility without consent of owner.

A person shall not, without the effective consent of the owner, acquire or otherwise exercise control over an animal facility, an animal from an animal facility or other property from an animal facility with the intent to deprive the owner of the facility, animal or property and to disrupt or damage the enterprise conducted at the animal facility.

HISTORY: Law, 1996, ch. 424, § 3, eff from and after July 1, 1996.

Cross References — Penalties, see § 69-29-315.

§ 69-29-307. Prohibition against damaging or destroying animal or animal facility with intent to disrupt or damage without consent of owner.

A person shall not, without the effective consent of the owner, damage or destroy an animal facility or an animal or property in or on an animal facility with the intent to disrupt or damage the enterprise conducted at the animal facility.

HISTORY: Law, 1996, ch. 424, § 4, eff from and after July 1, 1996.

Cross References — Penalties, see § 69-29-315.

§ 69-29-309. Prohibition against entering or remaining concealed in animal facility to commit prohibited act without consent of owner.

A person shall not, without the effective consent of the owner, with the intent to disrupt or damage the enterprise conducted at the animal facility:

(a) Enter an animal facility, not then open to the public, with intent to commit an act prohibited by this article;

(b) Remain concealed, with intent to commit an act prohibited by this article, in an animal facility; or

(c) Enter an animal facility and commit or attempt to commit an act prohibited by this article.

HISTORY: Law, 1996, ch. 424, § 5, eff from and after July 1, 1996.

Cross References — Penalties, see § 69-29-315.

§ 69-29-311. Prohibition against entering or remaining in animal facility with intent to disrupt or damage enterprise conducted at facility without consent of owner; notice requirement; definitions.

(1) A person shall not, without the effective consent of the owner, enter or remain in an animal facility with the intent to disrupt or damage the enterprise conducted at the animal facility if the person:

(a) Had notice that the entry was forbidden; or

(b) Received notice to depart but failed to do so.

(2) For purposes of this section, "notice" means:

(a) Oral or written communication by the owner or someone with apparent authority to act for the owner;

(b) Fencing or other enclosure obviously designed to exclude intruders or to contain animals; or

(c) A sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden.

HISTORY: Law, 1996, ch. 424, § 6, eff from and after July 1, 1996.

Cross References — Penalties, see § 69-29-315.

§ 69-29-313. Applicability.

This article does not apply to, affect or otherwise prohibit actions taken by the Department of Agriculture and Commerce, any other federal, state or local department or agency or an official or employee of these entities while in the exercise or performance of a power of duty imposed by law or regulation.

HISTORY: Law, 1996, ch. 424, § 7, eff from and after July 1, 1996.

§ 69-29-315. Penalties for violations.

(1) A person violating the provisions of Sections 69-29-305, 69-29-307 and 69-29-309, upon conviction, shall be punished by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than three (3) years, or both.

(2) A person violating the provisions of Section 69-29-311, upon conviction, shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by imprisonment for not more than one (1) year, or both.

HISTORY: Law, 1996, ch. 424, § 8, eff from and after July 1, 1996.

CHAPTER 31.

REGULATION OF MOISTURE-MEASURING DEVICES

Sec.

69-31-1. Definitions.

69-31-3. Commissioner of Agriculture and Commerce to enforce chapter.

69-31-5. Inspection of devices.

69-31-7. Seals to be placed on inspected devices.

69-31-9. Defective devices used to measure moisture; reinspection.

69-31-11. Device to be used in location visible to general public; display of procedure for operation of device.

69-31-13. Grain moisture; measuring devices; inspection and use.

69-31-15. Penalties.

§ 69-31-1. Definitions.

As used in this chapter, unless the context requires otherwise:

(a) “Agricultural products” means any product of agriculture which is tested for moisture content when offered for sale, processing or storage.

(b) “Commissioner” means the commissioner of the Mississippi Department of Agriculture and Commerce.

(c) “Department” means the department of agriculture and commerce.

(d) “Moisture-measuring devices” means any device or instrument used by any person in proving or ascertaining the moisture content of agricultural products.

(e) “Person” means any individual, corporation, partnership, cooperative association, or two (2) or more persons having a joint or common interest in the same venture.

HISTORY: Laws, 1978, ch. 466, § 1, eff from and after July 1, 1978.

§ 69-31-3. Commissioner of Agriculture and Commerce to enforce chapter.

The commissioner is hereby charged with the enforcement of this chapter and is empowered to promulgate rules, regulations, specifications, standards and tests as may be necessary in order to secure the efficient administration of this chapter. The department may, from time to time, publish such data in connection with the administration of this chapter as may be of public interest.

HISTORY: Laws, 1978, ch. 466, § 3, eff from and after July 1, 1978.

Cross References — Duties of Commissioner of Agriculture and Commerce, generally, see § 69-1-13.

Duties of commissioner in connection with the regulation of devices for measuring the moisture content of agricultural products, see § 69-31-1 et seq.

§ 69-31-5. Inspection of devices.

The department shall inspect or cause to be inspected at least annually every moisture-measuring device used in commerce in this state, except those belonging to the United States or the state, or any subdivision of either, except as may be requested. The department may inspect or cause to be inspected at the convenience of the department any moisture-measuring device upon a request in writing from the owner.

HISTORY: Laws, 1978, ch. 466, § 2, eff from and after July 1, 1978.

§ 69-31-7. Seals to be placed on inspected devices.

If an inspection or comparative test reveals that the moisture-measuring device being inspected or tested conforms to the standards and specifications established by the department, the department shall cause the same to be marked with an appropriate seal. Any moisture-measuring device which upon inspection is found not to conform with the specifications and standards established by the department shall be marked with an appropriate seal showing such device to be defective. The seal shall not be altered or removed until said moisture-measuring device is properly repaired and reinspected. The department shall notify the owner or user of such device of its defective condition. Notification shall be made on an inspection form prepared by the department.

HISTORY: Laws, 1978, ch. 466, § 4, eff from and after July 1, 1978.

§ 69-31-9. Defective devices used to measure moisture; reinspection.

(1) Any defective moisture-measuring device, while so marked, sealed, or tagged, as provided in Section 69-31-7, may be used to ascertain the moisture content of agricultural products offered for sale, processing or storage, only under the following conditions:

(a) The owner or user shall make adjustment for error on all agricultural products tested, and the owner or user shall keep a record open to inspection, of every commercial sample of agricultural products inspected by means of the defective device, showing that such adjustment was made on all such agricultural products tested.

(b) The device shall be repaired to comply with Section 69-31-7 within thirty (30) days after inspection and the department thereupon notified that the device has been repaired accordingly.

(2) If, upon reinspection, the device is again rejected under the provisions of Section 69-31-7, such device shall be sealed and shall not be used until repaired and reinspected.

HISTORY: Laws, 1978, ch. 466, § 5, eff from and after July 1, 1978.

§ 69-31-11. Device to be used in location visible to general public; display of procedure for operation of device.

Every moisture-measuring device offered for sale, processing or storage shall be used in a location visible to the general public and the detailed procedure for operating a moisture-measuring device shall be displayed in a conspicuous place proximate to the moisture-measuring device.

HISTORY: Laws, 1978, ch. 466, § 6, eff from and after July 1, 1978.

§ 69-31-13. Grain moisture; measuring devices; inspection and use.

After May 1, 1979, no person shall use or cause to be used any grain moisture-measuring device which has not been inspected and approved for use by the department; except that after May 1, 1979, a newly purchased grain moisture-measuring device may be used prior to regular inspection and approval if the user of such device has given at least ten (10) days' notice to the department of the purchase prior to the use of such new device.

HISTORY: Laws, 1978, ch. 466, § 7, eff from and after July 1, 1978.

§ 69-31-15. Penalties.

Any person who uses or causes to be used a moisture-measuring device in commerce with the knowledge that such device has not been inspected and approved by the department, in accordance with the provisions of this chapter, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed Five Hundred Dollars ($500.00) or by imprisonment in the county jail for a period not to exceed six (6) months, or by both such fine and imprisonment.

HISTORY: Laws, 1978, ch. 466, § 8, eff from and after July 1, 1978.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 33.

PECAN HARVESTING

Sec.
69-33-1. Definitions.
69-33-3. Removal of pecans from public right-of-way during harvesting season prohibited.
69-33-5. Pecans left on public right-of-way after harvesting season deemed abandoned.
69-33-7. Normal road maintenance to continue; owners not authorized to harvest pecans from interstate or limited access rights-of-way.
69-33-9. Penalty for violations.

§ 69-33-1. Definitions.

For the purpose of this chapter, the following words shall have the following meanings unless the context shall prescribe otherwise:

(a) "Owner" means the person, firm or corporation owning the land on which pecan trees are growing or the person, firm or corporation having legal possession of such land.

(b) "Harvesting season" means that portion of each calendar year beginning on October 1 and ending December 31.

HISTORY: Laws, 1981, ch. 391, § 1, eff from and after July 1, 1981.

§ 69-33-3. Removal of pecans from public right-of-way during harvesting season prohibited.

When pecan trees are grown on private property and the branches of such trees extend over a public road, street or highway right-of-way, any pecans falling from any such pecan trees onto such public right-of-way shall be deemed the property of the owner of such pecan trees until the end of the harvesting season, and it shall be unlawful for any person, without the permission of the owner of such trees, to remove such pecans from any such public right-of-way during the harvesting season. It shall be unlawful for any person, without the permission of the owner of such trees, to pick or otherwise remove any pecans from the limbs or branches of pecan trees or to cause pecans to fall from such trees.

HISTORY: Laws, 1981, ch. 391, § 2, eff from and after July 1, 1981.

Cross References — Criminal offense of cutting or rafting pecan trees on lands of others, see §§ 97-7-65, 97-17-81.

Trespass and destruction or carrying away of vegetation or agricultural products, see § 97-17-89.

§ 69-33-5. Pecans left on public right-of-way after harvesting season deemed abandoned.

Any pecans remaining on a public road, street or highway right-of-way during that portion of each calendar year except the harvesting season shall be deemed to be abandoned by the owner of such pecans, and it shall not be unlawful for any person to remove such pecans from such public right-of-way, except during the harvesting season.

HISTORY: Laws, 1981, ch. 391, § 3, eff from and after July 1, 1981.

§ 69-33-7. Normal road maintenance to continue; owners not authorized to harvest pecans from interstate or limited access rights-of-way.

The provisions of this chapter shall not be construed to prohibit employees of the state highway department or the employees of a county or municipality from engaging in normal activities of maintenance on the rights-of-way of public roads, streets or highways. Nor shall the provisions of this chapter be construed to grant the owner of any pecan trees the right to harvest pecans from the rights-of-way of any interstate or other limited access highway.

HISTORY: Laws, 1981, ch. 391, § 4, eff from and after July 1, 1981.

§ 69-33-9. Penalty for violations.

Any person who shall be found guilty of violating the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding One Hundred Dollars ($100.00) or be imprisoned not exceeding thirty (30) days in the county jail, or both.

HISTORY: Laws, 1981, ch. 391, § 5, eff from and after July 1, 1981.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 34.

MILK PRODUCERS TRANSPORTATION COST ASSISTANCE LOAN PROGRAM

Sec.
69-34-1. Repealed.

§ 69-34-1. Repealed.

Repealed by Laws, 2009, ch. 389, § 1, eff from and after December 31, 2012.

§ 69-34-1. [Laws, 2007, ch. 571, § 1; Laws, 2009, ch. 389, § 1, eff from and after July 1, 2009.]

Editor's Notes — Former § 69-34-1 created the Milk Producers Transportation Cost Assistance Loan Fund.

CHAPTER 35.

MISSISSIPPI DAIRY PROMOTION ACT

Sec.

69-35-1. Title.

69-35-3. Legislative findings, purpose and policy.

69-35-5. Definitions.

69-35-7. Activities under chapter not illegal or in restraint of trade.

69-35-9. Dairy producers' referendum on levying milk assessment.

69-35-11. Procedures for holding referendum; ballots; maximum assessment.

69-35-13. Supervision of referendum; expense.

69-35-15. Referendum to be statewide; question to be submitted.

69-35-17. Majority vote rules.

69-35-19. Defeat of referendum; subsequent referendums.

69-35-21. Time, manner, and form of giving notice of referendum; contents of notice.

69-35-23. Preparation and distribution of ballots; conduct of referendum; results.

69-35-25. Vote of cooperative associations.

69-35-27. Collection of assessment; failure to pay assessment.

69-35-29. Refund of assessments.

69-35-31. Report of amount of assessments received and collected.

69-35-33. Date of initial referendum.

§ 69-35-1. Title.

This act shall be known as the "Mississippi Dairy Promotion Act."

HISTORY: Laws, 1989, ch. 504, § 1, eff from and after passage (approved April 4, 1989).

§ 69-35-3. Legislative findings, purpose and policy.

(1) It is hereby declared and the Legislature hereby finds that:

(a) Dairy products are basic foods that are a valuable part of the human diet;

(b) The production of dairy products plays a significant role in the state's economy, the milk from which dairy products are manufactured is produced by milk producers and dairy products are consumed by thousands of people throughout the state and the United States;

(c) Dairy products must be readily available and marketed efficiently to ensure that the people of the state receive adequate nourishment;

(d) The maintenance and expansion of existing markets for dairy products are vital to the welfare of milk producers and those concerned with marketing, using and producing dairy products, as well as to the general economy of the state;

(e) Dairy products move in intrastate, interstate and foreign commerce;

(f) The Ninety-eighth Congress of the United States enacted the Dairy Production Stabilization Act of 1983 and established the National Dairy Board (7 U.S.C. 4501 et seq.) authorizing the establishment of orderly procedures for financing promotional and educational programs for milk and dairy products through a mandatory Fifteen Cents (15¢) per hundredweight assessment on all milk produced in the United States for commercial use, and the carrying out of a coordinated program of promotion designed to strengthen the dairy industry's position in the marketplace, and authorizing such orderly procedures to permit a milk producer or a producer's cooperative to establish that the producer is participating in active, ongoing qualified state or regional dairy product promotion or nutrition education programs intended to increase consumption of milk and dairy products generally, to receive credit in determining the assessment due from such producer for contributions to such state programs in an amount not in excess of Ten Cents (10¢) per hundredweight of milk marketed; and

(g) The American Dairy Association of Mississippi has been designated by the Secretary of Agriculture of the United States Department of Agriculture as a qualified promotional organization pursuant to the terms of the Dairy Production Stabilization Act of 1983 (7 U.S.C. Section 4501 et seq).

(2) It, therefore, is declared to be the policy of the Legislature that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this act, of an orderly procedure for financing (through assessments on all milk produced in the state for commercial use) and carrying out a coordinated program of promotion designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products produced in the state and the United States. All funds obtained by the state ADA as a result of the passage of this act shall be exclusively utilized to promote the dairy industry within the State of Mississippi, and its contiguous states. Nothing in this act may be construed to provide for the control of production or otherwise limit the right of individual milk producers to produce milk.

HISTORY: Laws, 1989, ch. 504, § 2, eff from and after passage (approved April 4, 1989).

§ 69-35-5. Definitions.

The following terms shall have the following meanings unless context shall provide otherwise:

(a) "State" means the State of Mississippi;

(b) "Milk" means any class of cow's milk produced in the state;

(c) "Dairy products" means products manufactured for human consumption which are derived from the processing of milk and includes fluid milk products;

(d) "Fluid milk products" means those products normally consumed in liquid form as a beverage;

(e) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative association, or any other entity;

(f) "Producer" means any person engaged in the production of milk for commercial use;

(g) "Promotion" means actions such as paid advertising, sales promotion and publicity to advance the image and sales of and demand for dairy products;

(h) "Nutrition education" means those activities intended to broaden the understanding of sound nutritional principle including the role of milk and dairy products in a balanced diet;

(i) "State ADA" means the American Dairy Association of Mississippi;

(j) "Extension service" means the Mississippi Cooperative Extension Service;

(k) "Bulk tank unit" means a bulk tank unit as defined in accordance with the State Board of Health, Dairy Inspection Division;

(*l*) "Block voting" means the vote cast by associations approved to be eligible to vote as described in Section 69-35-25;

(m) "Handler" means any person engaged in the business of distributing, marketing, or in any manner handling fluid milk or dairy products, in whole or in part, for consumption;

(n) "National Dairy Board" means the National Dairy Promotion and Research Board established under 7 U.S.C. 4504, as amended;

(o) "Act" shall mean the Mississippi Dairy Promotion Act; and

(p) "Cooperative association" means any cooperative marketing association of producers which is organized under the provisions of the act of Congress of February 18, 1922, known as the "Capper-Volstead Act."

HISTORY: Laws, 1989, ch. 504, § 3, eff from and after passage (approved April 4, 1989).

§ 69-35-7. Activities under chapter not illegal or in restraint of trade.

No association, meeting or activity undertaken pursuant to the provisions of this act and intended to benefit all of the producers and handlers of milk and dairy products in Mississippi shall be deemed or considered illegal or in restraint of trade.

HISTORY: Laws, 1989, ch. 504, § 4, eff from and after passage (approved April 4, 1989).

§ 69-35-9. Dairy producers' referendum on levying milk assessment.

It is hereby further declared to be in the public interest and highly advantageous to the agricultural economy of the state that, producers and handlers of milk and dairy products shall be permitted by referendum to be held among producers in the state and subject to the provisions of this act, to levy upon themselves an assessment on such milk produced in the state, for the purpose of financing or contributing towards the financing of a program of promotion and nutrition education designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and use for fluid milk and dairy products produced in the state and the United States. It is hereby further declared to be in the public interest and highly advantageous to the agricultural economy of the state that the state ADA conduct the referendum in coordination with the extension service in accordance with the provisions of this act and the Federal Dairy Promotion Program codified in 7 U.S.C. 4501, et seq.

HISTORY: Laws, 1989, ch. 504, § 5, eff from and after passage (approved April 4, 1989).

§ 69-35-11. Procedures for holding referendum; ballots; maximum assessment.

(1) With respect to any referendum conducted under the provisions of this act, the state ADA and extension service shall, before calling and announcing such referendum, fix, determine and publicly announce at least thirty (30) days before the date determined upon for such referendum, the date, hours and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if authorized by the producers, and the general purposes to which said amount so collected shall be applied. No annual assessment levied under the provisions of this act shall exceed the federally mandated Fifteen Cents (15¢) per hundredweight of milk produced, however an amount not to exceed Ten Cents (10¢) per hundredweight of milk produced shall be credited to the State ADA for dairy product promotion or nutrition education programs.

(2) As an alternative method of conducting a referendum under the provisions of this act, the state ADA and extension service in its discretion may conduct the referendum by a mail ballot as herein provided. In the event that a decision is made to conduct a mail ballot, public notice of said mail ballot shall be made at least thirty (30) days before the date of said referendum. Said notice shall contain the same information required by subsection (1) of this section except that the notice will also state that the ballot is to be conducted by mail rather than at polling places. The notice shall also state that official ballots are being mailed on a date specified in the notice to all bulk tank units known by the state ADA and extension service to be eligible to vote and that any bulk tank unit not receiving by mail an official ballot by a date specified in the notice will have ten (10) days thereafter to apply for an official ballot at the office of the state ADA. The notice shall state the deadline for the receipt of all ballots and the address of the state ADA.

(3) Official ballots shall be prepared by the state ADA and extension service and mailed by first class mail to the last known address of all bulk tank units known to be eligible to vote. As announced in the public notice, said ballots shall be made available for a period of not less than ten (10) days, to those who are eligible to vote in said referendum and did not receive a ballot by mail.

(4) Before any bulk tank unit shall receive an official ballot, he shall furnish such proof as the state ADA and extension service may require of his eligibility to vote in said referendum. The state ADA shall keep a list of those

bulk tank units who receive official ballots. No bulk tank unit may receive more than one (1) official ballot unless the bulk tank unit proves to the satisfaction of the state ADA and extension service that the ballot has been lost or destroyed.

(5) No votes shall be counted which are not on official ballots. To be eligible to be counted, ballots must be received by the state ADA at the place and by the deadline previously announced in the public notice of said referendum.

HISTORY: Laws, 1989, ch. 504, § 6, eff from and after passage (approved April 4, 1989).

§ 69-35-13. Supervision of referendum; expense.

The arrangements for, management and supervision of any referendum conducted under the provisions of this act shall be under the direction of the state ADA in cooperation with the county extension agent of each county in the state, and any and all expenses in connection therewith shall be borne by the state ADA.

HISTORY: Laws, 1989, ch. 504, § 7, eff from and after passage (approved April 4, 1989).

§ 69-35-15. Referendum to be statewide; question to be submitted.

Any referendum conducted under the provisions of this act shall be held on a statewide basis. In such referendum, the bulk tank units eligible for participation shall vote upon the question of whether or not there shall be levied an annual assessment for a period of five (5) years in the amount set forth in the call for such referendum.

HISTORY: Laws, 1989, ch. 504, § 8, eff from and after passage (approved April 4, 1989).

§ 69-35-17. Majority vote rules.

If in such referendum called under the provisions of this act a simple majority of the bulk tank units eligible to participate and voting therein shall vote in the affirmative and in favor of the levying and collection of such assessment proposed in such milk referendum covered thereby, then such assessment shall be collected in the manner determined and announced by the state ADA.

HISTORY: Laws, 1989, ch. 504, § 9, eff from and after passage (approved April 4, 1989).

§ 69-35-19. Defeat of referendum; subsequent referendums.

In the event such referendum so to be conducted as herein provided shall not be supported by a majority of those eligible for participation and voting therein, then the state ADA and extension service conducting the said referendum shall have the full power and authority to call another referendum for the purposes herein set forth in the next succeeding year, on the question of an annual assessment for five (5) years.

HISTORY: Laws, 1989, ch. 504, § 10, eff from and after passage (approved April 4, 1989).

§ 69-35-21. Time, manner, and form of giving notice of referendum; contents of notice.

The hours, voting places, rules and regulations of the milk and dairy products, said referendum date, hours, voting places, rules and regulations with respect to the holding of such referendum shall be published by the state ADA and extension service through the medium of the public press in the state at least thirty (30) days before the holding of such referendum, and direct written notice thereof shall likewise be given to all dairy-related organizations within the state and to each county extension agent and shall likewise state the method by which such assessment shall be collected and how the proceeds thereof shall be administered and the purposes to which the same shall be applied, which purposes shall be in keeping with the provisions of this act.

HISTORY: Laws, 1989, ch. 504, § 11, eff from and after passage (approved April 4, 1989).

§ 69-35-23. Preparation and distribution of ballots; conduct of referendum; results.

The state ADA and extension service shall likewise prepare and distribute in advance of such referendum all necessary ballots for the purposes thereof, and shall, under rules and regulations promulgated, arrange for the necessary poll holders for conducting the said referendum; and following such referendum and within ten (10) days thereafter shall canvas and publicly declare the result of such referendum.

HISTORY: Laws, 1989, ch. 504, § 12, eff from and after passage (approved April 4, 1989).

§ 69-35-25. Vote of cooperative associations.

(1) In conducting any referendum under this act, the state ADA and extension service shall consider the approval or disapproval by any cooperative association engaged in a bona fide manner in marketing milk or the dairy products as the approval or disapproval of the producers who are members of or under contract with such cooperative association of producers.

(2) In order to be eligible to vote in a referendum, a cooperative association must:

(a) Certify to the state ADA and extension service in conjunction with casting its ballot, that the association is organized under the provisions of the "Capper-Volstead Act" and that it is engaged in a bona fide manner in marketing its members' milk or dairy products;

(b) Certify to the state ADA and extension service in conjunction with casting its ballot, the number of bulk tank units on whose behalf the cooperative association is casting a ballot, that such bulk tank units are members of or under contract with the cooperative association and that the association was engaged during the representative period in marketing the milk of each of the bulk tank units for whom the cooperative association claims the right to vote;

(c) Furnish to the state ADA and extension service in conjunction with casting its ballot, a copy of the resolution authorizing the casting of the ballot;

(d) Certify to the state ADA and extension service in conjunction with casting its ballot, that the cooperative association has complied with the requirements of subsection (3) of this section; and

(e) Agree to make available to the state ADA and extension service necessary records and information pertaining to the representative period to validate the eligibility of the cooperative association to vote and to verify the number and identity of the producers on whose behalf the cooperative association claims the right to vote.

(3) Not later then thirty (30) days prior to the beginning of the referendum, each cooperative association shall notify the state ADA and extension service as to whether or not the association intends to vote on behalf of its bulk tank units.

HISTORY: Laws, 1989, ch. 504, § 13, eff from and after passage (approved April 4, 1989).

Cross References — Application of this section to definition of "Block voting," see § 69-35-5.

§ 69-35-27. Collection of assessment; failure to pay assessment.

(1) In the event a majority of the bulk tank units eligible for participation in such referendum and voting therein shall vote in favor of such assessment, then the said assessment shall be collected monthly for the number of years set forth in the call for such referendum, and the collection of such assessment shall be under such method, rules and regulations as may be determined by the state ADA conducting the same; and the said assessment so collected shall be paid into the treasury of the state ADA to be used together with other funds from other sources. Funds to be collected pursuant to a referendum conducted under this act shall be withheld and paid by each handler, including producer handlers, to the state ADA by the last calendar day of the month succeeding the month in which the milk was received by the handler.

(2) In the event of a failure to pay part or all of an assessment levied pursuant to this act, the Attorney General of the state shall, upon the request

of the state ADA, enforce the provisions of this act and collect such monies for payment to the state ADA. In the alternative to requesting the Attorney General to enforce the provisions of this act, the state ADA may bring a civil action to collect assessment from a handler failing to pay such assessments. A handler found to have failed to pay assessments pursuant to this act shall also be liable for reasonable attorney's fees and costs in the collection of such assessments.

HISTORY: Laws, 1989, ch. 504, § 14, eff from and after passage (approved April 4, 1989).

§ 69-35-29. Refund of assessments.

In the event such referendum is carried in the affirmative and the assessment is levied and collected as provided herein and under the regulations to be promulgated by the state ADA, any bulk tank unit upon and against whom such assessments shall have been levied and collected under the provisions of this act, if a bulk tank unit is dissatisfied with said assessment and the result thereof, such unit shall have the right to demand that the treasurer of the state ADA refund such assessment so collected from such bulk tank unit, provided such demand for refund is made in writing within thirty (30) days from the date on which said assessment is collected or due to be collected, whichever is earlier, from such bulk tank unit under the rules and regulations of the state ADA. Pursuant to the Dairy Promotion Stabilization Act of 1983, 7 U.S.C. Section 4510 et seq., any such funds shall be transferred to the National Dairy Board by the treasurer of the state ADA.

HISTORY: Laws, 1989, ch. 504, § 15, eff from and after passage (approved April 4, 1989).

§ 69-35-31. Report of amount of assessments received and collected.

In the event of the levying and collection of assessments as herein provided, the treasurer of the state ADA conducting same shall, within ninety (90) days after the end of any calendar year in which such assessments are collected, have available upon written request by a producer, or extension service or other agency of the state, a statement of the amount or amounts so received and collected by him under the provisions of this act.

HISTORY: Laws, 1989, ch. 504, § 16, eff from and after passage (approved April 4, 1989).

§ 69-35-33. Date of initial referendum.

The date of any initial referendums authorized under the provisions of this act shall be set on or before June 1, 1989.

HISTORY: Laws, 1989, ch. 504, § 17, eff from and after passage (approved April 4, 1989).

CHAPTER 36.

SOUTHERN DAIRY COMPACT

Sec.
69-36-1. Southern Dairy Compact; Mississippi's participation [For contingent effective date, see Editor's Notes].
69-36-3. Mississippi compact delegation members; terms; vacancies; compensation [For contingent effective date, see Editor's Notes].
69-36-5. Access to records and information [For contingent effective date, see Editor's Notes].
69-36-7. Rules and regulations [For contingent effective date, see Editor's Notes].
69-36-9. Penalties for violations [For contingent effective date, see Editor's Notes].

§ 69-36-1. Southern Dairy Compact; Mississippi's participation [For contingent effective date, see Editor's Notes].

The Southern Dairy Compact, the full text of which is hereinafter set forth and confirmed by the Mississippi Legislature, is hereby entered into on behalf of the State of Mississippi. The compact shall become effective when enacted into law by at least two (2) other states within the compact group of states and when the consent of Congress has been obtained. The full text of said compact is as follows:

SOUTHERN DAIRY COMPACT

ARTICLE I. STATEMENT OF PURPOSE, FINDINGS AND DECLARATION OF POLICY

§ 1. Statement of purpose, findings and declaration of policy.

The purpose of this compact is to recognize the interstate character of the southern dairy industry and the prerogative of the states under the United States Constitution to form an interstate commission for the southern region. The mission of the commission is to take such steps as are necessary to assure the continued viability of dairy farming in the south, and to assure consumers of an adequate, local supply of pure and wholesome milk.

The participating states find and declare that the dairy industry is an essential agricultural activity of the South. Dairy farms, and associated suppliers, marketers, processors and retailers are an integral component of the region's economy. Their ability to provide a stable, local supply of pure, wholesome milk is a matter of great importance to the health and welfare of the region.

The participating states further find that dairy farms are essential and they are an integral part of the region's rural communities. The farms preserve land for agricultural purposes and provide needed economic stimuli for rural communities.

In establishing their constitutional regulatory authority over the region's fluid milk market by this compact, the participating states declare their purpose that this compact neither displace the federal order system nor encourage the merging of federal orders. Specific provisions of the compact itself set forth this basic principle.

Designed as a flexible mechanism able to adjust to changes in a regulated marketplace, the compact also contains a contingency provision should the federal order system be discontinued. In that event, the interstate commission is authorized to regulate the marketplace in replacement of the order system. This contingent authority does not anticipate such a change, however, and should not be so construed. It is only provided should developments in the market other than establishment of this compact result in continuance of the order system.

By entering into this compact, the participating states affirm that their ability to regulate the price which southern dairy farmers receive for their product is essential to the public interest. Assurance of a fair and equitable price for dairy farmers ensures their ability to provide milk to the market and the vitality of the southern dairy industry, with all the associated benefits.

Recent, dramatic price fluctuations with a pronounced downward trend threaten the viability and stability of the southern dairy region. Historically, individual state regulatory action had been an effective emergency remedy available to farmers confronting a distressed market. The federal order system, implemented by the Agricultural Marketing Agreement Act of 1937, establishes only minimum prices paid to producers for raw milk, without preempting the power of states to regulate milk prices above the minimum levels so established.

In today's regional dairy marketplace, cooperative rather than individual state action is needed to more effectively address the market disarray. Under our constitutional system, properly authorized states acting cooperative may exercise more power to regulate interstate commerce than they may assert individually without such authority. For this reason, the participating states invoke their authority to act in common agreement, with the consent of Congress, under the compact clause of the Constitution.

ARTICLE II. DEFINITIONS AND RULES OF CONSTRUCTION

§ 2. Definitions.

For the purposes of this compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

(1) "Class I milk" means milk disposed of in fluid form or as a fluid milk product, subject to further definition in accordance with the principles expressed in subdivision (b) of § 3 of this compact.

(2) "Commission" means the Southern Dairy Compact Commission established by this compact.

(3) "Commission marketing order" means regulations adopted by the

commission pursuant to § 9 and § 10 of this compact in place of a terminated federal marketing order or state dairy regulation. Such order may apply throughout the region or in any part or parts thereof as defined in the regulations of the commission. Such order may establish minimum prices for any or all classes of milk.

(4) “Compact” means this interstate compact.

(5) “Compact over-order price” means a minimum price required to be paid to producers for Class I milk established by the commission in regulations adopted pursuant to § 9 and § 10 of this compact, which is above the price established in federal marketing orders or by state farm price regulations in the regulated area. Such price may apply throughout the region or in any part or parts thereof as defined in the regulations of the commission.

(6) “Milk” means the lacteral secretion of cows and includes all skim, butterfat, or other constituents obtained from separation or any other process. The term is used in its broadest sense and may be further defined by the commission for regulatory purposes.

(7) “Partially regulated plant” means a milk plant not located in a regulated area but having Class I distribution within such area. Commission regulations may exempt plants having such distribution or receipts in amounts less than the limits defined therein.

(8) “Participating state” means a state which has become a party to this compact by the enactment of concurring legislation.

(9) “Pool plant” means any milk plant located in a regulated area.

(10) “Region” means the territorial limits of the states which are parties to this compact.

(11) “Regulated area” means any area within the region governed by and defined in regulations establishing a compact over-order price or commission marketing order.

(12) “State dairy regulation” means any state regulation of dairy prices, and associated assessments, whether by statute, marketing order or otherwise.

§ 3. Rules of construction.

(a) This compact shall not be construed to displace existing federal milk marketing orders or state dairy regulation in the region but to supplement them. In the event some or all federal orders in the region are discontinued, the compact shall be construed to provide the commission the option to replace them with one or more commission marketing orders pursuant to this compact.

(b) The compact shall be construed liberally in order to achieve the purposes and intent enunciated in § 1 of this compact. It is the intent of this compact to establish a basic structure by which the commission may achieve those purposes through the application, adaptation and development of the regulatory techniques historically associated with milk marketing and to afford the commission broad flexibility to devise regulatory mechanisms to achieve the purposes of this compact. In accordance with this intent, the technical terms which are associated with market order regulation and which have acquired commonly understood general meanings are not defined herein but the commission may further define the terms used in this compact and develop additional concepts and define additional terms as it may find appropriate to achieve its purposes.

ARTICLE III. COMMISSION ESTABLISHED

§ 4. Commission established.

There is hereby created a commission to administer the compact, composed of delegations from each state in the region. The commission shall be known as the Southern Dairy Compact Commission. A delegation shall include not less than three (3) nor more than five (5) persons. Each delegation shall include at least one (1) dairy farmer who is engaged in the production of milk at the time of appointment or reappointment, and one (1) consumer representative. Delegation members shall be residents and voters of, and subject to such confirmation process as is provided for in the appointing state. Delegation members shall serve no more than three (3) consecutive terms with no single term of more than four (4) years, and be subject to removal for cause. In all other respects, delegation members shall serve in accordance with the laws of the state represented. The compensation, if any, of the members of a state delegation shall be determined and paid by each state, but their expenses shall be paid by the commission.

§ 5. Voting requirements.

All actions taken by the commission, except for the establishment or termination of an over-order price or commission marketing order, and the adoption, amendment or rescission of the commission's bylaws, shall be by majority vote of the delegations present. Each state delegation shall be entitled to one (1) vote in the conduct of the commission's affairs. Establishment or termination of an over-order price or commission marketing order shall require at least a two-thirds (⅔) vote of the delegations present. The establishment of a regulated area which covers all or part of a participating state shall require also the affirmative vote of that state's delegation. A majority of the delegations from the participating states shall constitute a quorum for the conduct of the commission's business.

§ 6. Administration and management.

(a) The commission shall elect annually from among the members of the participating state delegations a chairperson, a vice chairperson, and a treasurer. The commission shall appoint an executive director and fix his or her duties and compensation. The executive director shall serve at the pleasure of the commission, and together with the treasurer, shall be bonded in an amount determined by the commission. The commission may establish through its bylaws an executive committee composed of one (1) member elected by each delegation.

(b) The commission shall adopt bylaws for the conduct of its business by a two-thirds (⅔) vote, and shall have the power by the same vote to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form with the appropriate agency or officer in each of the participating states. The bylaws shall provide for appropriate notice to the delegations of all commission meetings and hearings and of the business to be transacted at such meetings or hearings. Notice also shall be given to other agencies or officers of participating states as provided by the laws of those states.

(c) The commission shall file an annual report with the Secretary of Agriculture of the United States, and with each of the participating states by submitting copies to the Governor, both houses of the Legislature, and the head of the state department having responsibilities for agriculture.

(d) In addition to the powers and duties elsewhere prescribed in this compact, the commission shall have the power:

(1) To sue and be sued in any state or federal court;

(2) To have a seal and alter the same at pleasure;

(3) To acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or other similar manner, for its corporate purposes;

(4) To borrow money and issue notes, to provide for the rights of the holders thereof and to pledge the revenue of the commission as security therefor, subject to the provisions of § 18 of this compact;

(5) To appoint such officers, agents, and employees as it may deem necessary, prescribe their powers, duties and qualifications; and

(6) To create and abolish such offices, employments and positions as it deems necessary for the purposes of the compact and provide for the removal, term, tenure, compensation, fringe benefits, pension, and retirement rights of its officers and employees. The commission may also retain personal services on a contract basis.

§ 7. Rulemaking power.

In addition to the power to promulgate a compact over-order price or commission marketing orders as provided by this compact, the commission is further empowered to make and enforce such additional rules and regulations as it deems necessary to implement any provisions of this compact, or to effectuate in any other respect the purposes of this compact.

ARTICLE IV. POWERS OF THE COMMISSION

§ 8. Powers to promote regulatory uniformity, simplicity, and interstate cooperation.

The commission is hereby empowered to:

(1) Investigate or provide for investigations or research projects designed to review the existing laws and regulations of the participating states, to consider their administration and costs, to measure their impact on the production and marketing of milk and their effects on the shipment of milk and milk products within the region.

(2) Study and recommend to the participating states joint or cooperative programs for the administration of the dairy marketing laws and regulations and to prepare estimates of cost savings and benefits of such programs.

(3) Encourage the harmonious relationships between the various elements in the industry for the solution of their material problems. Conduct symposia or conferences designed to improve industry relations, or a better understanding of problems.

(4) Prepare and release periodic reports on activities and results of the commission's efforts to the participating states.

(5) Review the existing marketing system for milk and milk products and recommend changes in the existing structure for assembly and distribution of milk which may assist, improve or promote more efficient assembly and distribution of milk.

(6) Investigate costs and charges for producing, hauling, handling, processing, distributing, selling and for all other services performed with respect to milk.

(7) Examine current economic forces affecting producers, probable trends in production and consumption, the level of dairy farm prices in relation to costs, the financial conditions of dairy farmers, and the need for an emergency order to relieve critical conditions on dairy farms.

§ 9. Equitable farm prices.

(a) The powers granted in this section and § 10 of this compact shall apply only to the establishment of a compact over-order price, so long as federal milk marketing orders remain in effect in the region. In the event that any or all such orders are terminated, this article shall authorize the commission to establish one or more commission marketing orders, as herein provided, in the region or parts thereof as defined in the order.

(b) A compact over-order price established pursuant to this section shall apply only to Class I milk. Such compact over-order price shall not exceed One Dollar and Fifty Cents ($1.50) per gallon at Atlanta, Georgia; however, this compact over-order price shall be adjusted upward or downward at other locations in the region to reflect differences in minimum federal order prices. Beginning in 1990, and using that year as a base, the foregoing One Dollar and Fifty Cents ($1.50) per gallon maximum shall be adjusted annually by the rate of change in the Consumer Price Index as reported by the Bureau of Labor Statistics of the United States Department of Labor. For purposes of the pooling and equalization of an over-order price, the value of milk used in other use classifications shall be calculated at the appropriate class price established pursuant to the applicable federal order or state dairy regulation and the value of unregulated milk shall be calculated in relation to the nearest prevailing class price in accordance with and subject to such adjustments as the commission may prescribe in regulations.

(c) A commission marketing order shall apply to all classes and uses of milk.

(d) The commission is hereby empowered to establish a compact over-order price for milk to be paid by pool plants and partially regulated plants. The commission is also empowered to establish a compact over-order price to be paid by all handlers receiving milk from producers located in a regulated area. This price shall be established either as a compact over-order price or by one or more commission marketing orders. Whenever such a price has been established by either type of regulation, the legal obligation to pay such price shall be determined solely by the terms and purpose of the regulation without regard to the situs of the transfer of title, possession or any other factors not related to the purposes of the regulation and this compact. Producer-handlers as defined in an applicable federal market order shall not be subject to a compact over-order price. The commission shall provide for similar treatment of producer-handlers under commission marketing orders.

(e) In determining the price, the commission shall consider the balance between production and consumption of milk and milk products in the regulated area, the costs of production including, but not limited to the price of feed, the cost of labor including the reasonable value of the producer's own labor and management, machinery expense, and interest expense, the prevailing price for milk outside the regulated area, the purchasing power of the public and the price necessary to yield a reasonable return to the producer and distributor.

(f) When establishing a compact over-order price, the commission shall take such other action as is necessary and feasible to help ensure that the over-order price does not cause or compensate producers so as to generate local production of milk in excess of those quantities necessary to assure consumers of an adequate supply for fluid purposes.

(g) The commission shall whenever possible enter into agreements with state or federal agencies for exchange of information or services for the purpose of reducing regulatory burden and cost of administering the compact. The commission may reimburse other agencies for the reasonable cost of providing these services.

§ 10. Optional provisions for pricing order.

Regulations establishing a compact over-order price or a commission marketing order may contain, but shall not be limited to any of the following:

(1) Provisions classifying milk in accordance with the form in which or purpose for which it is used, or creating a flat pricing program.

(2) With respect to a commission marketing order only, provisions establishing or providing a method for establishing separate minimum prices for each use classification prescribed by the commission, or a single

minimum price for milk purchased from producers or associations of producers.

(3) With respect to an over-order minimum price, provisions establishing or providing a method for establishing such minimum price for Class I milk.

(4) Provisions for establishing either an over-order price or a commission marketing order may make use of any reasonable method for establishing such price or prices including flat pricing and formula pricing. Provision may also be made for location adjustments, zone differentials and for competitive credits with respect to regulated handlers who market outside the regulated area.

(5) Provisions for the payment to all producers and associations of producers delivering milk to all handlers or uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered, or for the payment of producers delivering milk to the same handler of uniform prices for all milk delivered by them.

(A) With respect to regulations, establishing a compact over-order price, the commission may establish one (1) equalization pool within the regulated area for the sole purpose of equalizing returns to producers throughout the regulated area.

(B) With respect to any commission marketing order, as defined in § 2, subdivision (3) of this compact, which replaces one or more terminated federal orders or state dairy regulations, the marketing area of now separate state or federal orders shall not be merged without the affirmative consent of each state, voting through its delegation, which is partly or wholly included within any such marketing area.

(6) Provisions requiring persons who bring Class I milk into the regulated area to make compensatory payments with respect to all such milk to the extent necessary to equalize the cost of milk purchased by handlers subject to a compact over-order price or commission marketing order. No such provisions shall discriminate against milk producers outside the regulated area. The provisions for compensatory payments may require payment of the difference between the Class I price required to be paid for such milk in the state of production by a federal milk marketing order or state dairy regulation and the Class I price established by the compact over-order price or commission marketing order.

(7) Provisions specially governing the pricing and pooling of milk handled by partially regulated plants.

(8) Provisions requiring that the account of any person regulated under the compact over-order price shall be adjusted for any payments made to or received by such persons with respect to a producer settlement fund of any federal or state milk marketing order or other state dairy regulation within the regulated area.

(9) Provision requiring the payment by handlers of an assessment to cover the costs of the administration and enforcement of such order pursuant to Article VII, § 18(a) of this compact.

(10) Provisions for reimbursement to participants of the Women, Infants and Children Special Supplemental Food Program of the United States Child Nutrition Act of 1966.

(11) Other provisions and requirements as the commission may find are necessary or appropriate to effectuate the purposes of this compact and to provide for the payment of fair and equitable minimum prices to producers.

ARTICLE V. RULEMAKING PROCEDURE

§ 11. Rulemaking procedure.

Before promulgation of any regulations establishing a compact over-order price or commission marketing order, including any provision with respect to milk supply under subsection 9(f) of this compact, or amendment thereof, as provided in Article IV, the commission shall conduct an informal rulemaking proceeding to provide interested persons with an opportunity to present data and views. Such rulemaking proceeding shall be governed by Section 4 of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553). In addition, the commission shall, to the extent practicable, publish notice of rulemaking proceedings in the official register of each participating state. Before the initial adoption of regulations establishing a compact over-order price or a commission marketing order and thereafter before any amendment with regard to prices or assessments, the commission shall hold a public hearing. The commission may commence a rulemaking proceeding on its own initiative or may in its sole discretion act upon the petition of any person including individual milk producers, any organization of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, state or federal officials.

§ 12. Findings and referendum.

(a) In addition to the concise general statement of basis and purpose required by Section 4(b) of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553(c)), the commission shall make findings of fact with respect to:

(1) Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV of this compact.

(2) What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) Whether the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.

(4) Whether the terms of the proposed regional order or amendment are approved by producers as provided in § 13 of this compact.

§ 13. Producer referendum.

(a) For the purpose of ascertaining whether the issuance or amendment of regulations establishing a compact over-order price or a commission marketing order, including any provision with respect to milk supply under subsection 9(f) of this compact, is approved by producers, the commission shall conduct a referendum among producers. The referendum shall be held in a timely manner, as determined by regulation of the commission. The terms and conditions of the proposed order or amendment shall be described by the commission in the ballot used in the conduct of the referendum, but the nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto.

(b) An order or amendment shall be deemed approved by producers if the commission determines that it is approved by at least two-thirds (⅔) of the voting producers who, during a representative period determined by the commission, have been engaged in the production of milk the price of which would be regulated under the proposed order or amendment.

(c) For purposes of any referendum, the commission shall consider the approval or disapproval by any cooperative association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the Capper-Volstead Act, bona fide engaged in marketing milk, or in rendering services for or advancing the interests of producers of such commodity, as the approval or disapproval of the producers who are members or stockholders in, or under contract with, such cooperative association of producers, except as provided in subdivision (1) hereof and subject to the provisions of subdivisions (2) through (5) hereof.

(1) No cooperative which has been formed to act as a common marketing agency for both cooperatives and individual producers shall be qualified to block vote for either.

(2) Any cooperative which is qualified to block vote shall, before submitting its approval or disapproval in any referendum, give prior written notice to each of its members as to whether and how it intends to cast its vote. The notice shall be given in a timely manner as established, and in the form prescribed, by the commission.

(3) Any producer may obtain a ballot from the commission in order to register approval or disapproval of the proposed order.

(4) A producer who is a member of a cooperative which has provided notice of its intent to approve or not to approve a proposed order, and who obtains a ballot and with such ballot expresses his approval or disapproval of the proposed order, shall notify the commission as to the name of the cooperative of which he or she is a member, and the commission shall remove such producer's name from the list certified by such cooperative with its corporate vote.

(5) In order to insure that all milk producers are informed regarding the proposed order, the commission shall notify all milk producers that an order is being considered and that each producer may register his approval or disapproval with the commission either directly or through his or her cooperative.

§ 14. Termination of over-order price or marketing order.

(a) The commission shall terminate any regulations establishing an over-order price or commission marketing order issued under this article whenever it finds that such order or price obstructs or does not tend to effectuate the declared policy of this compact.

(b) The commission shall terminate any regulations establishing an over-order price or a commission marketing order issued under this article whenever it finds that such termination is favored by a majority of the producers who, during a representative period determined by the commission, have been engaged in the production of milk the price of which is regulated by such order, but such termination shall be effective only if announced on or before such date as may be specified in such marketing agreement or order.

(c) The termination or suspension of any order or provision thereof shall not be considered an order within the meaning of this article and shall require no hearing, but shall comply with the requirements for informal rulemaking prescribed by Section 4 of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553).

ARTICLE VI. ENFORCEMENT

§ 15. Records; reports; access to premises.

(a) The commission may by rule and regulation prescribe recordkeeping and reporting requirements for all regulated persons. For purposes of the administration and enforcement of this compact, the commission is authorized to examine the books and records of any regulated person relating to his or her milk business and for that purpose, the commission's properly designated officers, employees, or agents shall have full access during normal business hours to the premises and records of all regulated persons.

(b) Information furnished to or acquired by the commission officers, employees, or its agents pursuant to this section shall be confidential and not subject to disclosure except to the extent that the commission deems disclosure to be necessary in any administrative or judicial proceeding involving the administration or enforcement of this compact, an over-order price, a compact marketing order, or other regulations of the commission. The commission may promulgate regulations further defining the confidentiality of information pursuant to this section. Nothing in this section shall be deemed to prohibit (i) the issuance of general statements based upon the reports of a number of handlers, which do not identify the information furnished by any person, or (ii) the publication by direction of the commission of the name of any person violating any regulation of the commission, together with a statement of the particular provisions violated by such person.

(c) No officer, employee, or agent of the commission shall intentionally disclose information, by inference or otherwise, which is made confidential pursuant to this section. Any person violating the provisions of this section shall, upon conviction, be subject to a fine of not more than One Thousand Dollars ($1,000.00) or to imprisonment for not more than one (1) year, or to both, and shall be removed from office. The commission shall refer any allegation of a violation of this section to the appropriate state enforcement authority or United States Attorney.

§ 16. Subpoena; hearings and judicial review.

(a) The commission is hereby authorized and empowered by its members and its properly designated officers to administer oaths and issue subpoenas throughout all signatory states to compel the attendance of witnesses and the giving of testimony and the production of other evidence.

(b) Any handler subject to an order may file a written petition with the commission stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the commission. After such hearing, the commission shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(c) The district courts of the United States in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within thirty (30) days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the commission by delivering to it a copy of the complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the commission with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subdivision shall not impede, hinder, or delay the commission from obtaining relief pursuant to § 17 of this compact. Any proceedings brought pursuant to § 17 of this compact, except where brought by way of counterclaim in proceedings instituted pursuant to this section, shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this section.

§ 17. Enforcement with respect to handlers.

(a) Any violation by a handler of the provisions of regulations establishing an over-order price or a commission marketing order, or other regulations adopted pursuant to this compact shall:

(1) Constitute a violation of the laws of each of the signatory states. Such violation shall render the violator subject to a civil penalty in an amount as may be prescribed by the laws of each of the participating

states, recoverable in any state or federal court of competent jurisdiction. Each day such violation continues shall constitute a separate violation.

(2) Constitute grounds for the revocation of license or permit to engage in the milk business under the applicable laws of the participating states.

(b) With respect to handlers, the commission shall enforce the provisions of this compact, regulations establishing an over-order price, a commission marketing order or other regulations adopted hereunder by:

(1) Commencing an action for legal or equitable relief brought in the name of the commission of any state or federal court of competent jurisdiction; or

(2) Referral to the state agency for enforcement by judicial or administrative remedy with the agreement of the appropriate state agency of a participating state.

(c) With respect to handlers, the commission may bring an action for injunction to enforce the provisions of this compact or the order or regulations adopted thereunder without being compelled to allege or prove that an adequate remedy of law does not exist.

ARTICLE VII. FINANCE

§ 18. Finance of start-up and regular costs.

(a) To provide for its start-up costs, the commission may borrow money pursuant to its general power under § 6, subdivision (d), paragraph four (4) of this compact. In order to finance the costs of administration and enforcement of this compact, including payback of start-up costs, the commission is hereby empowered to collect an assessment from each handler who purchases milk from producers within the region. If imposed, this assessment shall be collected on a monthly basis for up to one (1) year from the date the commission convenes, in an amount not to exceed $.015 per hundredweight of milk purchased from producers during the period of the assessment. The initial assessment may apply to the projected purchases of handlers for the two-month period following the date the commission convenes. In addition, if regulations establishing an over-order price or a compact marketing order are adopted, they may include an assessment for the specific purpose of their administration. These regulations shall provide for establishment of a reserve for the commission's ongoing operating expenses.

(b) The commission shall not pledge the credit of any participating state or of the United States. Notes issued by the commission and all other financial obligations incurred by it shall be its sole responsibility and no participating state or the United States shall be liable therefor.

§ 19. Audit and accounts.

(a) The commission shall keep accurate accounts of all receipts and disbursements, which shall be subject to the audit and accounting procedures established under its rules. In addition, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(b) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the participating states and by any persons authorized by the commission.

(c) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any participating state or of the United States.

ARTICLE VIII. ENTRY INTO FORCE; ADDITIONAL MEMBERS AND WITHDRAWAL

§ 20. Entry into force; additional members.

The compact shall enter into force effective when enacted into law by any three (3) states of the group of states composed of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia and when the consent of Congress has been obtained.

§ 21. Withdrawal from compact.

Any participating state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one (1) year after notice in writing of the withdrawal is given to the commission and the governors of all other participating states. No withdrawal shall affect any liability already incurred by or chargeable to a participating state prior to the time of such withdrawal.

§ 22. Severability.

If any part or provision of this compact is adjudged invalid by any court, such judgment shall be confined in its operation to the part or provision directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this compact. In the event Congress consents to this compact subject to conditions, said conditions shall not impair the validity of this compact when said conditions are accepted by three (3) or more compacting states. A compacting state may accept the conditions of Congress by implementation of this compact.

HISTORY: Laws, 1998, ch. 421, § 1, eff when enacted into law by at least two (2) other states within the compact group of states and when the consent of Congress has been obtained.

Editor's Notes — Laws of 1998, ch. 421, § 7 provides as follows:
"SECTION 7. This act shall take effect and be in force when enacted into law by at

least two (2) other states within the compact group of states and when the consent of Congress has been obtained."

Comparable Laws from other States — Georgia: Ga. O.C.G.A. § 2-20-1 et seq.
Kentucky: Ky. Rev. Stat. Ann. § 260.670.
Louisiana: La. R.S. § 3:4021 et seq.
Missouri: § 262.700 R.S. Mo.
South Carolina: S.C. Code Ann. §§ 46-50-30
Tennessee: Tenn. Code Ann. § 43-35-101 et seq.
Virginia: Va. Code Ann. § 3.2-3300.
West Virginia: W. Va. Code §§ 19-11C-1

§ 69-36-3. Mississippi compact delegation members; terms; vacancies; compensation [For contingent effective date, see Editor's Notes].

(1) The Commissioner of Agriculture and Commerce shall appoint five (5) delegates from Mississippi to represent the state on the Southern Dairy Compact Commission, created and provided for in Article III of the Southern Dairy Compact. The delegates shall include one (1) dairy producer who is engaged in the production of milk at the time of appointment or reappointment, one (1) consumer representative, one (1) dairy processor, one (1) retail distributor and one (1) delegate at large. There shall be at least one (1) member appointed from each separate Supreme Court district in Mississippi.

(2) Each delegate shall serve for a term of four (4) years and shall serve diligently and conscientiously and shall strive to achieve the purposes of the Southern Dairy Compact.

(3) Each appointment shall be submitted to the Mississippi Senate for confirmation.

(4) Vacancies in delegate positions shall be filled in the same manner as the original appointments for the unexpired portion of the vacant delegate's position.

(5) The commissioner may provide funding as necessary to the delegation during its term.

HISTORY: Laws, 1998, ch. 421, § 2, eff when enacted into law by at least two (2) other states within the compact group of states and when the consent of Congress has been obtained.

Editor's Notes — Laws of 1998, ch. 421, § 7 provides as follows:
"SECTION 7. This act shall take effect and be in force when enacted into law by at least two (2) other states within the compact group of states and when the consent of Congress has been obtained."

§ 69-36-5. Access to records and information [For contingent effective date, see Editor's Notes].

The Commissioner of Agriculture and Commerce may, by lawful means, obtain information pertaining to the dairy industry which he deems necessary to carry out the purposes of the provisions of this chapter and the Southern

Dairy Compact. Such information may be utilized by the commissioner, the delegates, and the Southern Dairy Compact Commission.

HISTORY: Laws, 1998, ch. 421, § 3, eff when enacted into law by at least two (2) other states within the compact group of states and when the consent of Congress has been obtained.

Editor's Notes — Laws of 1998, ch. 421, § 7 provides as follows:
"SECTION 7. This act shall take effect and be in force when enacted into law by at least two (2) other states within the compact group of states and when the consent of Congress has been obtained."

§ 69-36-7. Rules and regulations [For contingent effective date, see Editor's Notes].

The Commissioner of Agriculture and Commerce may adopt such rules and regulations, in accordance with the Mississippi Administrative Procedure Act, Section 25-43-1 et seq., Mississippi Code of 1972, as are necessary to carry out the purposes of this chapter and the Southern Dairy Compact.

HISTORY: Laws, 1998, ch. 421, § 4, eff when enacted into law by at least two (2) other states within the compact group of states and when the consent of Congress has been obtained.

Editor's Notes — Laws of 1998, ch. 421, § 7 provides as follows:
"SECTION 7. This act shall take effect and be in force when enacted into law by at least two (2) other states within the compact group of states and when the consent of Congress has been obtained."

§ 69-36-9. Penalties for violations [For contingent effective date, see Editor's Notes].

(1) No person shall violate this chapter, the Southern Dairy Compact, or any rules or regulations adopted pursuant to either this chapter or the compact.

(2) In addition to any other penalties provided by law, a civil penalty of One Thousand Dollars ($1,000.00) may be imposed for each violation, licenses may be revoked or suspended, or an additional penalty may be imposed in lieu of revocation or suspension.

(3) Each day on which a violation occurs shall be a separate violation.

HISTORY: Laws, 1998, ch. 421, § 5, eff when enacted into law by at least two (2) other states within the compact group of states and when the consent of Congress has been obtained.

Editor's Notes — Laws of 1998, ch. 421, § 7 provides as follows:
"SECTION 7. This act shall take effect and be in force when enacted into law by at least two (2) other states within the compact group of states and when the consent of Congress has been obtained."

CHAPTER 37.

MISSISSIPPI BOLL WEEVIL MANAGEMENT ACT

Sec.

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69-37-41. Mississippi Boll Weevil Management Corporation to be certified as administering authority to plan and implement boll weevil management programs.

§ 69-37-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Boll Weevil Management Act."

HISTORY: Laws, 1993, ch. 345, § 1, eff from and after July 1, 1993.

§ 69-37-3. Purpose; liberal construction.

The Legislature has determined that the boll weevil is a public nuisance, a pest and a menace to the cotton industry. The purpose of this chapter is:

(a) To provide procedures through which cotton growers in the State of Mississippi may manage boll weevil suppression, pre-eradication or eradication programs and boll weevil containment/maintenance programs;

(b) To provide for certification of the Mississippi Boll Weevil Management Corporation to cooperate with state and federal agencies in the administration of cost-sharing programs for suppression, pre-eradication, eradication or post-eradication of boll weevils in Mississippi; and

(c) To empower the Mississippi Department of Agriculture and Commerce to promulgate and enforce regulations in support of those programs. This chapter should be construed liberally to achieve these purposes.

HISTORY: Laws, 1993, ch. 345, § 2; Laws, 2010, ch. 524, § 2, eff from and after July 1, 2010.

OPINIONS OF THE ATTORNEY GENERAL

The Cotton Growers Organization may direct that both pro and con literature be attached to the ballots, but literature in favor of only one side of the issue may not be included. See Section 69-37-19. Foster, January 25, 1996, A.G. Op. #96-0037.

RESEARCH REFERENCES

CJS.

3 C.J.S., Agriculture § 9.

§ 69-37-5. Definitions.

As used in this chapter, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Assessment" means the amount per acre to be charged each cotton grower to finance, in whole or part, a boll weevil suppression, pre-eradication, eradication or post-eradication program in this state. The assessments shall be based on scientifically sound data regarding the level of boll weevil infestation in the state and the anticipated cost of conducting the proposed program.

(b) "Board" means the Board of Directors of the Mississippi Boll Weevil Management Corporation.

(c) "Boll weevil" means Anthonomus grandis Boheman in any stage of development.

(d) "Mississippi Boll Weevil Management Corporation Board of Directors" means the statewide administrative board elected by all Mississippi cotton growers who are members of a local cotton growers association to serve and represent the interests and concerns of Mississippi cotton growers with respect to the administration of boll weevil management programs and the nonvoting advisory members as provided in Section 69-7-13.

(e) "Bureau" means the Bureau of Plant Industry within the regulatory office of the Mississippi Department of Agriculture and Commerce.

(f) "Certificate" means a document issued or authorized by the Bureau of Plant Industry indicating that a regulated article is not contaminated with boll weevils.

(g) "Cotton growers association" means a local association with membership open to all Mississippi cotton growers. Cotton growers associations represent the interests and concerns of Mississippi cotton growers to the Mississippi Boll Weevil Management Corporation.

(h) "Commissioner" means the Commissioner of Agriculture and Commerce.

(i) "Containment/maintenance program" means a statewide program designed to monitor the level of boll weevil infestations to eliminate any reinfestation of boll weevils.

(j) "Corporation" means the Mississippi Boll Weevil Management Corporation.

(k) "Cotton" means any cotton plant or cotton plant products upon which the boll weevil is dependent for completion of any portion of its life cycle.

(*l*) "Cotton grower" means any person who under the rules and regulations of the United States Department of Agriculture is actively engaged in cotton farming.

(m) "Department" means the Mississippi Department of Agriculture and Commerce.

(n) "Eradication program" means any statewide program designed to eliminate, contain and monitor the boll weevil as an economic pest within a specified area.

(o) "Host" means any plant or plant product upon which the boll weevil is dependent for completion of any portion of its life cycle.

(p) "Infested" means actually infested with a boll weevil or so exposed to infestation that it would be considered infested according to criteria established by program management and the Mississippi Boll Weevil Management Corporation.

(q) "Information gathering program" means any statewide program designed to gather information that will be used in administering a boll weevil management program.

(r) "Management program" means any statewide program designed to suppress or eradicate, contain and monitor the boll weevil or to gather information that will be used in planning or implementing such suppression or eradication programs.

(s) "Permit" means a document issued or authorized by the Bureau of Plant Industry to provide for the movement of regulated articles to restricted designations for limited handling, utilization or processing.

(t) "Person" means any individual, partnership, corporation, company, society, association or other business entity.

(u) "Pest" means any species of plant, animal, or microbe that adversely affects cotton production; including, but not limited to: insects, weeds, nematodes, bacteria, fungi, and viruses.

(v) "Post-eradication program" means any unified program designed to maintain boll weevil free status in the program area.

(w) "Pre-eradication program" means any statewide program designed to reduce overall boll weevil populations before entering a full scale eradication program.

(x) "Region" means a specific cotton growing area within the state as defined by the Technical Advisory Committee as those regions existed before July 1, 2010, defined based on similarities in boll weevil populations, cotton cultural practices, national topography and climate.

(y) "Regulated article" means any article of any character carrying or capable of carrying the boll weevil, including cotton plants, seed cotton, cottonseed, other hosts, gin trash, gin equipment, mechanical cotton pickers and other equipment associated with cotton production, harvesting or processing.

(z) "Suppression" means any statewide program designed to reduce overall boll weevil populations throughout the specified area.

(aa) "Technical Advisory Committee" means a group of professional scientists in the fields of entomology, agronomy, agricultural economics and other appropriate disciplines appointed by the Boll Weevil Management Board to provide technical guidance in developing and conducting effective boll weevil management programs.

HISTORY: Laws, 1993, ch. 345, § 3; Laws, 2010, ch. 524, § 3, eff from and after July 1, 2010.

§ 69-37-7. Authorization for programs to suppress or eradicate boll weevil; cooperation with other agencies or persons.

The commissioner, with the approval of the corporation, is authorized to carry out programs to suppress or eradicate the boll weevil in this state through suppression, pre-eradication, post-eradication, or containment/maintenance programs. The commissioner is authorized to cooperate with any agency of any state or the federal government, any other agency in this state, any person engaged in growing, processing, marketing, or handling cotton, or any group of those persons in this state in programs to effectuate the purposes of this chapter and may enter into written agreements to effectuate those purposes. The agreements may provide for cost sharing and for division of duties and responsibilities under this chapter and may include other provisions generally to effectuate the purposes of this chapter.

HISTORY: Laws, 1993, ch. 345, § 4; Laws, 2010, ch. 524, § 4, eff from and after July 1, 2010.

RESEARCH REFERENCES

ALR.
Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 38 et seq.

CJS.
3 C.J.S., Agriculture §§ 98 et seq.

§ 69-37-9. Entry upon premises to carry out provisions of chapter; monitoring, inspection, treatment with pesticides, and other activities; notice to owner; warrant.

The commissioner and the corporation or their authorized agent(s), after first notifying the owner, shall have authority to enter cotton fields, cotton processing facilities and other premises in order to carry out survey, suppression or eradication activities, including treatment with pesticides and monitoring of growing cotton or other host plants as may be necessary to carry out the provisions of this chapter. The commissioner and the corporation or their authorized agent(s) shall have authority to make inspection of any fields or premises in this state and any property located therein for the purpose of determining whether such property is infested with the boll weevil and for determining the extent of infestation. Such inspection and other activities may be conducted in a reasonable manner without a warrant at any reasonable time. Any judge of this state may, within his or her jurisdiction and upon proper cause shown, issue a warrant giving the commissioner the right of entry to any premises for the purpose of carrying out the provisions of this section or other activities authorized by this chapter.

HISTORY: Laws, 1993, ch. 345, § 5; Laws, 2010, ch. 524, § 5, eff from and after July 1, 2010.

RESEARCH REFERENCES

ALR.
Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 38, 40, 42, 44.
8 Am. Jur. Pl & Pr Forms (Rev), Crops, Forms 1-3 (Petition or application by District Attorney for removal or destruction of infested crops as public nuisance; order to show cause why such should not be destroyed; order for same).

CJS.
3 C.J.S., Agriculture §§ 98 et seq.

§ 69-37-11. All persons growing cotton to furnish information to commissioner and corporation.

Every person growing cotton in this state shall furnish to the commissioner and the corporation on forms supplied by the commissioner such information as the commissioner may require concerning the size and location of all commercial cotton fields and of noncommercial plantings of cotton grown as an ornamental plant or for any other purposes.

HISTORY: Laws, 1993, ch. 345, § 6; Laws, 2010, ch. 524, § 6, eff from and after July 1, 2010.

RESEARCH REFERENCES

ALR.
Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

§ 69-37-13. Bureau may certify Mississippi Boll Weevil Management Corporation for purpose of entering into agreements to effectuate purposes of chapter; eligibility for certification; corporation board of directors.

(1) The Mississippi Boll Weevil Management Corporation, upon certification by the bureau, may enter into agreements with the State of Mississippi, other states, the federal government and other parties as may be necessary to carry out the purposes of this chapter.

(2) In order to be eligible for certification by the bureau, the corporation must demonstrate to the satisfaction of the bureau that:

(a) It is a nonprofit organization and could qualify for tax-exempt status under Section 501(a) of the Internal Revenue Code of 1954 [26 USC 501(a)];

(b) Its purpose is for the representation of cotton growers associations that are open to all cotton growers in this state; and

(c) It has only one (1) class of voting members with each member entitled to only one (1) vote.

(3) The corporation's board of directors shall be composed of members who shall be chosen according to bylaws established by the corporation. Two (2) members elected from each of the five (5) original cotton growers regions as those regions existed before July 1, 2010, shall serve as voting members.

(4) There shall be six (6) nonvoting advisory members as follows:

(a) The Commissioner of Agriculture and Commerce, who shall serve in a nonvoting advisory capacity only, or his or her designee;

(b) The Vice President of the College of Agriculture and Life Sciences at Mississippi State University, who shall serve in a nonvoting advisory capacity only, or his or her designee;

(c) The Vice President of the School of Agriculture, Research, Extension and Applied Sciences at Alcorn State University, who shall serve in a nonvoting advisory capacity only, or his or her designee;

(d) The President of the Mississippi Farm Bureau Federation, who shall serve in a nonvoting advisory capacity only, or his or her designee; and

(e) The Chairmen of the Senate and House Agriculture Committees, who shall serve in nonvoting advisory capacities only.

(5) All books and records of account and minutes of proceedings of the board shall be available for inspection or audit by the commissioner at any reasonable time.

(6) Employees or agents of the board who handle funds of the board shall be adequately bonded in an amount to be determined by the commissioner.

HISTORY: Laws, 1993, ch. 345, § 7; Laws, 2010, ch. 524, § 7, eff from and after July 1, 2010.

§ 69-37-15. Certification of Mississippi Boll Weevil Management Corporation as official administrative and regulatory body; effect; revocation; debts of corporation not a liability of bureau or department.

Upon determination by the bureau that the Mississippi Boll Weevil Management Corporation meets the requirements of Section 69-37-13, the bureau shall certify the corporation as the official administrative and regulatory body for all Mississippi cotton growers who are members of a cotton growers association as defined in Section 69-37-5. The certification shall be for the purposes of this chapter only and shall not affect other organizations or associations of cotton growers established for other purposes.

The bureau shall certify only one (1) corporation and may revoke the certification of the corporation if at any time the corporation fails to meet the requirements of this chapter. The debts of the corporation, if there are any, shall not become the liability of the bureau or the department.

HISTORY: Laws, 1993, ch. 345, § 8; Laws, 2010, ch. 524, § 8, eff from and after July 1, 2010.

§ 69-37-17. Referenda, at request of corporation, as to assessments on cotton growers; character and disposition of funds assessed; Mississippi Boll Weevil Management Corporation Trust Fund [Subsection (8)(b) repealed effective July 1, 2023].

(1) At the request of the corporation, the bureau shall authorize a statewide referendum among all Mississippi cotton growers on the question of whether an assessment, not to exceed One Dollar ($1.00) per acre, shall be levied upon all cotton producers to offset, in whole or in part, the cost of maintaining the corporation, conducting referenda, and/or conducting a program to collect data and information on boll weevil populations and control costs. Any assessments levied for data-collecting programs as a result of the referendum shall be in addition to assessments being collected to support any other boll weevil management programs in the state.

(2) At the request of the corporation, the bureau shall authorize a statewide referendum among all Mississippi cotton growers on the question of whether an assessment, not to exceed Twelve Dollars ($12.00) per acre, shall

be levied upon all cotton growers to offset, in whole or in part, the cost of managing boll weevil suppression, pre-eradication, eradication, or post-eradication programs authorized by this chapter or by any other law of this state. The programs shall be designed on a statewide basis.

(3) The assessment levied under this chapter shall be based upon the level of boll weevil infestation and the anticipated cost of conducting the proposed program, as determined by available scientific data, and the number of acres of cotton planted in the specified management zone. The maximum amount of the assessment, the period of time for which it shall be levied, how it shall be levied, and when it shall be paid shall be determined by the bureau and the board and established by regulations according to this section. The maximum amount of the assessment, the period of time for which it will be levied, and when the payment is due shall appear on all ballots for the referenda authorized by subsections (1) and (2) of this section.

(4) All cotton growers having membership in a local cotton growers association shall be entitled to vote in any referendum authorized by subsections (1) and (2) of this section, and the bureau, after consultation with the corporation, shall determine any questions of eligibility to vote. A cotton grower must be growing cotton within this state and be a member of a local cotton growers association in order to be eligible to vote in elections and referenda concerning boll weevil management practices.

(5) Each eligible cotton grower shall be mailed a ballot upon which to cast a vote for or against the boll weevil suppression, pre-eradication, eradication or post-eradication program.

(6) Passage of a referendum under subsection (1) or (2) of this section shall require that at least twenty percent (20%) of the registered cotton growers vote in the referendum and that a majority of those voting statewide approve the referendum.

(7)(a) The assessments collected by the department under this chapter shall be promptly remitted to the State Treasury on behalf of the corporation in the special fund established in paragraph (b) of this subsection to be held in trust for the use and benefit of the corporation in administering the designated boll weevil management program through the suppression, pre-eradication, eradication or post-eradication of boll weevils.

(b) There is created within the State Treasury a special fund to be designated the "Mississippi Boll Weevil Management Corporation Trust Fund" into which shall be deposited all the revenues collected by the department for assessments levied under the provisions of this section. Monies in the fund shall be disbursed upon warrants issued by the State Fiscal Officer upon requisitions signed by the corporation's board. Monies in the fund shall remain inviolate and any unexpended amounts remaining in the fund at the end of the fiscal year, and any interest earned thereon, shall be divested to the corporation.

(8)(a) The corporation shall provide to the department an annual audit of its accounts performed by a certified public accountant.

(b)(i) The corporation shall provide the annual audit no later than November 15 for the preceding calendar year.

(ii) This paragraph (b) shall stand repealed on July 1, 2023.

(9) The assessments collected by the department under this chapter shall not be considered as "state" funds.

(10) Upon completion or termination of a program, any unused funds shall be transferred to and deposited in the Boll Weevil Management Fund created under Section 69-37-39, for the purpose of being used if there is a future occurrence of a boll weevil outbreak in the state.

HISTORY: Laws, 1993, ch. 345, § 9; Laws, 2010, ch. 524, § 9; Laws, 2012, ch. 453, § 1; Laws, 2016, ch. 400, § 1, eff from and after July 1, 2016; Laws, 2020, ch. 320, § 1, eff from and after July 1, 2020.

Joint Legislative Committee Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, "under this chapter" was substituted for "under this act" in (7)(a).

Amendment Notes — The 2020 amendment extended the date of the repealer for subsection (8)(b) by substituting "July 1, 2023" for "July 1, 2020" in (8)(b)(ii).

OPINIONS OF THE ATTORNEY GENERAL

The amount of any one assessment cannot exceed $40 per acre as provided in Section 69-37-17 for suppression, pre-eradication or eradication programs. However, it is up to regulations established by the Commissioner of Agriculture to determine for what period of time the assessment shall be levied, how it shall be levied and when it shall be paid. Foster, January 25, 1996, A.G. Op. #96-0037.

Section 69-37-17 appears to contemplate that individual cotton growers shall only be liable for assessments, penalties and fees as provided in the statute. The Certified Cotton Growers Organization could be liable for its debts. All employees and agents of the Organization who handle funds must be adequately bonded. Foster, January 25, 1996, A.G. Op. #96-0037.

Under Section 69-37-17, the bureau may limit those eligible to vote to those who are actually growing cotton, i.e. farmers, and may limit the assessment to those eligible voters. Foster, January 25, 1996, A.G. Op. #96-0037.

Under Section 69-37-17, assessment is made on a per acre basis. The same assessment for each acre cannot be payable twice; for example, by both the farmer and the landlord who owns the land and has a lien on the growing cotton. Foster, January 25, 1996, A.G. Op. #96-0037.

Based on the Section 69-37-21 and 69-37-17(5), in order for the program to continue fifty percent of the voting cotton growers must vote and two-thirds of those voting must vote for continuing with the program. If less than fifty percent of the registered cotton growers in the affected area do not vote then the referendum would not pass and the program would not continue. Moody, February 16, 1996, A.G. Op. #96-0052.

Any language that goes beyond the question to be voted upon or beyond the information required to be included by Section 69-37-17 should not appear on the ballot. Foster, February 22, 1996, A.G. Op. #96-0112.

RESEARCH REFERENCES

Am. Jur.

3 Am. Jur. 2d, Agriculture § 9.

§ 69-37-19. Conduct of referenda; expenses.

The arrangements for and management of any referendum held under this chapter shall be under the direction of the Mississippi Boll Weevil Management Corporation. The corporation shall bear all expenses incurred in conducting the referendum, to include furnishing the ballots and arranging for the necessary poll holders.

HISTORY: Laws, 1993, ch. 345, § 10; Laws, 2010, ch. 524, § 10, eff from and after July 1, 2010.

OPINIONS OF THE ATTORNEY GENERAL

The Cotton Growers Organization may direct that both pro and con literature be attached to the ballots, but literature in favor of only one side of the issue may not be included. See Section 69-37-3. Foster, January 25, 1996, A.G. Op. #96-0037.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture § 9.

§ 69-37-21. Subsequent referenda; annual report; limitation on assessment of fees.

(1) If any referendum conducted under this chapter fails to receive the required number of affirmative votes, the bureau, at the request of the corporation, shall be authorized to call other referenda.

(2) After the passage of any referendum, the eligible voters may be allowed, by subsequent referenda to be held upon recommendation of the corporation, to vote on whether to continue with the program and/or to modify the assessment fee. However, before any referendum is held proposing any modifications of the assessment, the corporation must submit its recommendation to the commissioner for approval. Upon petition by twenty percent (20%) of all eligible voting cotton growers within the state, the corporation shall be required to conduct a subsequent referendum on the question called in the petition, provided that the corporation is required to hold no more than one (1) petitioned referendum during any given calendar year. All the requirements for an initial referendum must be met in any subsequent referenda. The results of the referendum, along with annual audits of all monies expended on programs affected by the referendum, shall be reported each year to the Lieutenant Governor, the Speaker of the House of Representatives and the Chairmen of the Senate Agriculture Committee and the House of Representatives Agriculture Committee.

(3) It is the intent of the Legislature that the cost of the containment/maintenance phase of the boll weevil eradication program be borne by the producers, and that any subsequent debt incurred by the program be funded by subsidies, loans and grants from the federal government and other sources.

(4) No assessment under any subsequent referendum for a containment/

maintenance program may exceed Twelve Dollars ($12.00) an acre, and it shall be incumbent upon the Mississippi Boll Weevil Management Corporation to levy only that amount necessary to ensure the financial stability of the eradication program.

HISTORY: Laws, 1993, ch. 345, § 11; Laws, 2001, ch. 487, § 1; Laws, 2010, ch. 524, § 11, eff from and after July 1, 2010.

OPINIONS OF THE ATTORNEY GENERAL

Based on Section 69-37-21(2), in a subsequent referendum, two thirds of the voters must vote in favor of continuing the program in order for it to continue. Foster, January 25, 1996, A.G. Op. #96-0037.

Based on Sections 69-37-21 and 69-37-17(5), in order for the program to continue fifty percent of the voting cotton growers must vote and two-thirds of those voting must vote for continuing with the program. If less than fifty percent of the registered cotton growers in the affected area do not vote then the referendum would not pass and the program would not continue. Moody, February 16, 1996, A.G. Op. #96-0052.

A claim by some farmers against others based on detrimental reliance would not appear plausible since Section 69-37-21 specifically contemplates a subsequent referendum on whether to continue with the program. Spell, February 23, 1996, A.G. Op. #96-0082.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agriculture § 9.

§ 69-37-23. Liens to secure payment of assessments and penalties; destruction of untreatable commercial cotton as nuisance; compensation.

(1) For statewide management when assessments are established by passage of a referendum, the commissioner shall have a lien for payment of the assessments, together with any penalties levied under this chapter, against all cotton grown by each cotton grower who grows cotton within the state. This lien shall be of equal dignity with liens for taxes in favor of the state and the commissioner is authorized to issue executions for the collection of the assessments and liens described in this section in like manner as executions are issued for ad valorem property taxes due the state.

(2) In addition, the commissioner shall have a special lien on cotton for payment of assessments, together with any penalties levied under this chapter, which shall be superior to any other lien provided by law, shall arise as of the time the assessments become due and payable, and shall cover all cotton grown by the cotton grower from the date the lien arises until the assessments are paid. However, any buyer of cotton shall take free of the lien if the buyer has not received written notice of the lien from the commissioner, or if he has paid for the cotton by a check in which the department is named as joint payee.

(3) A cotton grower who fails to pay when due and upon reasonable notice

any assessment levied under this chapter shall be subject to a per acre penalty as established in the bureau's regulations, in addition to the assessment.

(4) Commercial cotton that is located in sites that cannot be treated adequately because of health, environmental or other concerns shall be deemed to be a public nuisance and shall be destroyed promptly. The commissioner, with the consent of the corporation and the approval of the Attorney General, may apply to the circuit court of the judicial circuit in which the public nuisance is located to have the nuisance condemned and destroyed. This injunctive relief shall be available to the commissioner notwithstanding the existence of any other legal remedy and the commissioner shall not be required to file a bond.

In those cases where commercial cotton is destroyed because of prevented treatment due to health or environmental concerns, the owner of the cotton shall be compensated for that portion of the crop that is destroyed. The per acre amount of the payments shall be based on a reasonable estimate of the value of the crop as determined by the commissioner in consultation with the corporation and the affected producer. Payments for those losses shall be funded by assessment fees paid by cotton growers and administered by the corporation.

HISTORY: Laws, 1993, ch. 345, § 12; Laws, 2010, ch. 524, § 12, eff from and after July 1, 2010.

OPINIONS OF THE ATTORNEY GENERAL

Section 75-9-310(a) pertaining to the filing of financing statements does not apply to the state's lien on farmers' cotton for boll weevil assessments. Tagert, Mar. 28, 2003, A.G. Op. #03-0132.

RESEARCH REFERENCES

ALR.

Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

Am. Jur.

3 Am. Jur. 2d, Agriculture §§ 9, 13, 38 et seq.

8 Am. Jur. Pl & Pr Forms (Rev), Crops, Forms 1-3 (Petition or application by District Attorney for removal or destruction of infested crops as public nuisance; order to show cause why such should not be destroyed; order for same); 58 (Complaint, declaration or petition – damages for destruction of crop – negligence in spraying cotton).

CJS.

3 C.J.S., Agriculture §§ 98 et seq.

§ 69-37-25. Quarantine, and control of movement of articles from infested areas in other states, by regulation of Bureau of Plant Industry.

The Bureau of Plant Industry is authorized to promulgate regulations quarantining this state, or any portion thereof, and governing the storage, treatment, or other handling in the quarantined areas of regulated articles and the movement of regulated articles into or from such areas. The bureau shall determine when such action is necessary, or appears reasonably necessary, to prevent or retard the spread of the boll weevil. The bureau is also authorized to promulgate regulations governing the movement of regulated articles from other states or portions thereof into this state when such state is known to be infested with the boll weevil. The promulgation of these regulations shall conform in all aspects to the Mississippi Administrative Procedures Law, Sections 25-43-1 et seq., Mississippi Code of 1972, and sound principles of quarantines.

HISTORY: Laws, 1993, ch. 345, § 13, eff from and after July 1, 1993.

Cross References — Bureau of Plant Industry, see § 69-25-1.

RESEARCH REFERENCES

ALR.

Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

Am. Jur.

3 Am. Jur. 2d, Agriculture § 41.

8 Am. Jur. Pl & Pr Forms (Rev), Crops, Forms 1-3 (Petition or application by District Attorney for removal or destruction of infested crops as public nuisance; order to show cause why such should not be destroyed; order for same).

CJS.

3 C.J.S., Agriculture § 98.

§ 69-37-27. Suppression, pre-eradication, eradication and no-growth zones; growers to share costs; notice, referenda, penalties, and appeal of penalties.

The bureau, with the concurrence of the corporation, is authorized to designate by regulation one or more areas of this state as “suppression zones,” “pre-eradication zones” or “eradication zones” where the specified boll weevil management programs will be undertaken. The bureau, with the concurrence of the corporation, is authorized to promulgate reasonable regulations regarding areas where cotton cannot be planted within a specified management zone when there is reason to believe that growing cotton in those areas will jeopardize the success of the program or present a hazard to public health or safety. The bureau, with the concurrence of the corporation, is authorized to issue regulations prohibiting the planting of noncommercial cotton in the management zones and requiring that all growers of commercial cotton in these zones participate in the specified boll weevil management program and share equitably in the cost. The costs shall be determined by available scientific data on the basis of the level of boll weevil infestation and the anticipated costs of the program in the various regions and shall be approved via referendum by cotton growers within the affected area under procedures set forth in this chapter. Notice of the prohibition and requirement shall be given by publication for one (1) day each week for three (3) successive weeks in a newspaper having general circulation in the affected area. The bureau, with the concurrence of the corporation, is authorized to set by regulation a reasonable schedule of penalty fees to be assessed when growers in designated "management zones" do not meet the requirements of regulations issued by the bureau with respect to reporting of acreage and participation in cost-sharing as prescribed by regulation. The penalty fees shall not exceed a charge of One Hundred Dollars ($100.00) per acre. The cotton grower charged with those penalties has the right to appeal this decision to the corporation.

HISTORY: Laws, 1993, ch. 345, § 14; Laws, 2010, ch. 524, § 13, eff from and after July 1, 2010.

RESEARCH REFERENCES

ALR.

Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

Am. Jur.

3 Am. Jur. 2d, Agriculture §§ 9, 13, 38 et seq.

8 Am. Jur. Pl & Pr Forms (Rev), Crops, Forms 1-3 (Petition or application by District Attorney for removal or destruction of infested crops as public nuisance; order to show cause why such should not be destroyed; order for same).

CJS.

3 C.J.S., Agriculture §§ 98 et seq.

§ 69-37-29. Destruction or treatment of cotton in eradication zones; compensation.

The commissioner, with the concurrence of the corporation, is authorized to destroy, or cause to be treated with pesticides, volunteer or other noncommercial cotton and to establish procedures for the purchase and destruction of commercial cotton in eradication zones when the commissioner deems the action necessary to effectuate the purposes of this chapter. No payment shall be made by the commissioner to the owner or lessee for the destruction or injury of any cotton that was planted in an eradication zone after publication of notice as provided in this chapter, or was otherwise handled in violation of this chapter or the regulations adopted under this chapter. However, the commissioner shall pay for losses resulting from the destruction of cotton that was planted in those zones before promulgation of the notice. Payments for those losses shall be funded by assessment fees paid by cotton growers and administered by the corporation.

HISTORY: Laws, 1993, ch. 345, § 15; Laws, 2010, ch. 524, § 14, eff from and after July 1, 2010.

RESEARCH REFERENCES

ALR.

Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

Am. Jur.

3 Am. Jur. 2d, Agriculture §§ 59, 60.

8 Am. Jur. Pl & Pr Forms (Rev), Crops, Forms 1-3 (Petition or application by District Attorney for removal or destruction of infested crops as public nuisance; order to show cause why such should not be destroyed; order for same); 58 (Complaint, declaration or petition – damages for de-

struction of crop – negligence in spraying cotton).

CJS.
3 C.J.S., Agriculture § 98.

§ 69-37-31. Regulations pertaining to livestock pasturage, human entry, honeybee colonies, and other activities affecting boll weevil control programs.

(1) The bureau, with the concurrence of the corporation, is authorized to promulgate reasonable regulations restricting the pasturage of livestock, entry by persons, location of honeybee colonies or other activities affecting the boll weevil eradication program in affected areas, for limited periods of time, which have been or will be treated with pesticides or otherwise treated to cause the eradication of the boll weevil, or in any other areas that may be affected by those treatments.

(2) The bureau shall also have authority to adopt any other rules and regulations as it deems necessary to further effectuate the purposes of this chapter, provided that those other rules and regulations are approved by the corporation.

HISTORY: Laws, 1993, ch. 345, § 16; Laws, 2010, ch. 524, § 15, eff from and after July 1, 2010.

RESEARCH REFERENCES

ALR.
Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 38 et seq.

CJS.
3 C.J.S., Agriculture §§ 98, 102, 103.

§ 69-37-33. Penalties for violations.

(1) Any person who shall violate any of the provisions of this chapter or the regulations promulgated hereunder, or who shall alter, forge or counterfeit or use without authority any certificate or permit or other document provided for in this chapter or in the regulations promulgated hereunder shall be guilty of a misdemeanor.

(2) Any person who, except in compliance with the regulations of the bureau, shall move any regulated article into this state from any other state, which the bureau found in such regulations is infested by the boll weevil, shall be guilty of a misdemeanor.

HISTORY: Laws, 1993, ch. 345, § 17, eff from and after July 1, 1993.

RESEARCH REFERENCES

ALR.
Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

Am. Jur.	**CJS.**
3 Am. Jur. 2d, Agriculture §§ 38 et seq.	3 C.J.S., Agriculture § 101.

§ 69-37-35. Exemptions from assessment penalties for financial hardship; payment plan.

The commissioner, with the consent of the corporation, is authorized to exempt from the assessment penalty requirements set forth in this chapter those cotton growers for whom paying the assessment penalties would impose an undue financial hardship, and the commissioner is authorized to establish, upon the recommendation of the corporation, a payment plan in those hardship cases. This exemption shall be implemented as follows:

(a) The commissioner, with the consent of the corporation, shall adopt rules and regulations defining the criteria to be used in determining financial hardship. However, no exemption shall be granted to any cotton grower who, after the amount of assessments and penalties otherwise due has been subtracted from his taxable net income, has a net income exceeding Fifteen Thousand Dollars ($15,000.00) for the year in which he seeks an exemption;

(b) Any cotton grower who claims an exemption shall apply on a form prescribed by the commissioner. A separate application shall be filed for each calendar year in which a cotton grower claims an exemption. Each application shall contain an explanation of the conditions to be met for approval. An oath shall be included on the form that upon completion shall be returned to the commissioner;

(c) The commissioner shall forward all completed exemption application forms to the corporation. The corporation shall determine from the information contained in the application forms whether or not the applicants qualify for a hardship exemption (exemption from penalty) and may recommend a payment plan to the commissioner; and

(d) The corporation shall notify the commissioner of its determination, which shall be binding upon the applicants. Upon receipt of the determination of the corporation, the commissioner shall promptly notify each affected cotton grower of that determination. If an exemption has been denied, assessments and penalties for the year in which the application was made shall become due at the time they would otherwise have become due had no application for exemption been filed or within thirty (30) days after the date of the commissioner's notice of an adverse determination, whichever is later.

HISTORY: Laws, 1993, ch. 345, § 18; Laws, 2010, ch. 524, § 16, eff from and after July 1, 2010.

Joint Legislative Committee Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in the introductory paragraph was corrected by substituting "this chapter" for "this article."

RESEARCH REFERENCES

ALR.
Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 9, 38 et seq.

CJS.
3 C.J.S., Agriculture § 101.

§ 69-37-37. Extension of chapter to other cotton pests upon recommendation of the corporation.

This chapter shall be extended to include all other cotton pest species upon recommendation of the corporation.

HISTORY: Laws, 1993, ch. 345, § 19; Laws, 1997, ch. 308, § 1; Laws, 2010, ch. 524, § 17, eff from and after July 1, 2010.

RESEARCH REFERENCES

ALR.
Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

Am. Jur.
3 Am. Jur. 2d, Agriculture §§ 38 et seq.

CJS.
3 C.J.S., Agriculture § 98.

§ 69-37-39. Boll Weevil Management Fund; deposits; disbursements.

There is created within the State Treasury a special fund to be designated the "Boll Weevil Management Fund" into which shall be deposited all the revenues required to be deposited into the fund under Section 27-65-75(14). Money deposited into the fund shall not lapse at the end of any fiscal year and investment earning on the proceeds in the special fund shall be deposited into the fund. Money from the fund shall be disbursed therefrom upon warrants issued by the State Fiscal Officer upon requisitions signed by the Commissioner of Agriculture and Commerce to assist the Mississippi Boll Weevil Management Corporation in carrying out its duties under the Mississippi Boll Weevil Management Act (Section 69-37-1 et seq.). The commissioner shall disburse all of the money the department receives from the fund to the Mississippi Boll Weevil Management Corporation, as defined in Section 69-37-5, for the exclusive purpose of reducing the per acre grower assessments.

HISTORY: Laws, 1998, ch. 584, § 1; Laws, 2010, ch. 524, § 18, eff from and after July 1, 2010.

Cross References — Avails of sales tax derived from sales by cotton compresses or cotton warehouses that would otherwise be deposited into the General Fund to be deposited into the Boll Weevil Management Fund until such time that the total amount deposited into the fund during a fiscal year equals $1,000,000.00, see § 27-65-75.

§ 69-37-41. Mississippi Boll Weevil Management Corporation to be certified as administering authority to plan and implement boll weevil management programs.

From and after July 1, 2010, the Mississippi Boll Weevil Management Corporation shall be certified by the Bureau of Plant Industry as the administering authority to plan and implement boll weevil management programs in this state, and all records, duties, responsibilities, assets, contractual rights and obligations relating to the administration, planning and implementation of boll weevil management programs in this state shall be under the jurisdiction of the corporation upon certification by the bureau. If for any reason the corporation fails to meet the criteria established in Sections 69-37-1 through 69-37-39, the bureau may certify an alternate cotton grower's association to serve as administrative authority of boll weevil management programs.

HISTORY: Laws, 2010, ch. 524, § 1, eff from and after July 1, 2010.

CHAPTER 39.

AGRICULTURAL LIMING MATERIALS

Sec.

69-39-1. Short title; administration of chapter.
69-39-3. Definitions.
69-39-5. Labeling requirements; posting at bulk delivery sites.
69-39-7. Sale of liming materials not in compliance with chapter, or toxic to plants or animals, prohibited.
69-39-9. Sale and distribution permit required; applications.
69-39-11. Annual registration of liming products.
69-39-13. Inspection and testing of liming materials; samples; procedures; distribution of results.
69-39-15. Issuance of stop sale or use order for products sold in violation of chapter; release from order.
69-39-17. Penalties for violations of chapter; warnings.
69-39-19. Promulgation of rules and regulations.
69-39-21. Repealed.

§ 69-39-1. Short title; administration of chapter.

This chapter shall be known and may be cited as “The Mississippi Agricultural Liming Materials Act of 1993.” This chapter shall be administered by the Commissioner of Agriculture and Commerce of the State of Mississippi herein referred to as the “commissioner.”

HISTORY: Laws, 1993, ch. 581, § 1, eff from and after July 1, 1993; reenacted without change, Laws, 2009, ch. 330, § 1, eff from and after July 1, 2009.

Editor’s Notes — Former § 69-39-21, which provided for the repeal of this section, was repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

§ 69-39-3. Definitions.

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) “Agricultural liming materials” means products containing calcium and magnesium compounds that are capable of neutralizing soil acidity.

(b) “Limestone” means a material consisting essentially of calcium carbonate or a combination of calcium carbonate with magnesium carbonate capable of neutralizing soil acidity.

(c) “Calcitic limestone” means a calcareous rock composed wholly or largely of calcium carbonate.

(d) “Dolomitic limestone” means a calcareous rock composed of calcium and magnesium carbonates with a minimum elemental magnesium (Mg) content of six percent (6%).

(e) “Burnt lime” means a material made from limestone that consists essentially of calcium oxide or a combination of calcium oxide with magnesium oxide.

(f) "Hydrated lime" means a material, made from burnt lime, that consists of calcium hydroxide or a combination of calcium hydroxide with magnesium oxide and/or magnesium hydroxide.

(g) "Marl" or "chalk" means a granular or loosely consolidated earthy material composed largely of sea shell fragments and calcium carbonate.

(h) "Ground shells" means a product obtained by the grinding of shells of mollusks and that shall carry the name of mollusk origin.

(i) "Industrial by-product" means any industrial waste or by-product containing calcium or calcium and magnesium in forms that will neutralize soil acidity.

(j) "Brand" means the term, designation, trademark, product name or other specific designation under which individual agricultural liming material is offered for sale.

(k) "Fineness" means the percentage by weight of the material that will pass United States Standard sieves of specified sizes. The commissioner shall promulgate regulations relating to fineness.

(*l*) "Ton" means 2,000 pounds avoirdupois.

(m) "Percent" or "percentage" means by weight.

(n) "Bulk" means in nonpackaged form.

(o) "Label" or "labeling" means all written, printed or graphic matter upon or accompanying any agricultural liming material or advertisements, brochures, posters, television and radio announcements used in promoting the sale of such agricultural liming material.

(p) "Commissioner" means the Commissioner of Agriculture and Commerce of the State of Mississippi, or his agents and employees.

(q) "Person" means any individual, partnership, corporation, association or other legal entity or organization.

(r) "Calcium carbonate equivalent" means the acid neutralizing capacity of an agricultural liming material expressed as weight percentage of calcium carbonate.

(s) "Weight" means the weight of undried material as offered for sale.

HISTORY: Laws, 1993, ch. 581, § 2, eff from and after July 1, 1993; reenacted without change, Laws, 2009, ch. 330, § 2, eff from and after July 1, 2009.

Editor's Notes — Former § 69-39-21, which provided for the repeal of this section, was repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

§ 69-39-5. Labeling requirements; posting at bulk delivery sites.

(1) All agricultural liming materials sold, offered or exposed for sale to any person in this state shall have affixed to each package in a conspicuous manner on the outside thereof, a plainly printed, stamped or otherwise marked label, tag or statement or in the case of bulk sales, a final invoice or bill of sale, setting forth at least the following information:

(a) The name and principal office address of the manufacturer or distributor;

(b) The brand or trade name of the material;

(c) The identification of the product as to the type of the agricultural liming material;

(d) The net weight of the agricultural liming material;

(e) The minimum percentage of calcium oxide and magnesium oxide and/or calcium carbonate and magnesium carbonate;

(f) The minimum guaranteed content of elemental magnesium (Mg) if claimed;

(g) The minimum guaranteed content of available potassium (K20) and/or phosphorous (P205) if claimed;

(h) Calcium carbonate equivalent as determined by methods prescribed by the Association of Official Analytical Chemists. Minimum calcium carbonate equivalents shall be as prescribed by regulation;

(i) The minimum percent by weight passing through United States Standard sieves as prescribed by regulations.

(2) In the case where agricultural liming materials are sold by a distributor or retailer, the manufacturer (mining company) of such material shall be responsible for furnishing the distributor or retailer with the information or statement required in this section in order for such distributor or retailer to forward the information or statement to the customer.

(3) No information or statement shall appear on any package label, delivery slip or advertising matter that is false or misleading to the purchaser as to the quality, analysis type or composition of the agricultural liming material.

(4) In the case of any material that has been adulterated subsequent to packaging, labeling or loading thereof and before delivery to the consumer, a plainly marked notice to that effect shall be affixed by the vendor to the package or delivery slip to identify the kind and degree of such adulteration therein.

(5) At every site from which agricultural liming materials are delivered in bulk and at every place where consumer orders for bulk deliveries are placed, there shall be conspicuously posted a copy of the statement required by this section for each brand of material.

(6) When the commissioner determines that the requirement for expressing the calcium and magnesium in elemental form would not impose an economic hardship on distributors and users of agricultural liming materials by reason of conflicting label requirements among the states, he may require by regulation thereafter that the minimum percentage of calcium oxide and magnesium oxide and/or calcium carbonate and magnesium carbonate shall be expressed in the following form:

Total Calcium (Ca) .... ________ percent
Total Magnesium (Mg) .... ________ percent

Provided, however, that the effective date of said regulation shall be not less than six (6) months following the issuance thereof.

HISTORY: Laws, 1993, ch. 581, § 3; reenacted without change, Laws, 2009, ch. 330, § 3, eff from and after July 1, 2009.

Editor's Notes — Former § 69-39-21, which provided for the repeal of this section, was repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

§ 69-39-7. Sale of liming materials not in compliance with chapter, or toxic to plants or animals, prohibited.

(1) No agricultural liming material shall be sold or offered for sale in this state unless it complies with provisions of this chapter and regulations pertaining thereto.

(2) No agricultural liming material shall be sold or offered for sale in this state that contains toxic materials in quantities injurious to plants or animals.

HISTORY: Laws, 1993, ch. 581, § 4, eff from and after July 1, 1993; reenacted without change, Laws, 2009, ch. 330, § 4, eff from and after July 1, 2009.

Editor's Notes — Former § 69-39-21, which provided for the repeal of this section, was repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

§ 69-39-9. Sale and distribution permit required; applications.

Every manufacturer or distributor who sells, offers for sale, exposes for sale, distributes or solicits orders for sale of any agricultural liming material to a distributor, retailer or farmer in the State of Mississippi, before selling or offering such agricultural liming material for sale or distributing or soliciting orders for sale shall secure a permit from the commissioner to engage in such business. Permit applications for each office or place of business in the State of Mississippi of such manufacturer or distributor shall be submitted upon forms prescribed by the commissioner. Such permit applications shall contain the name and address of the manufacturer or distributor and such other information as may be required by the commissioner for the effective enforcement of the provisions of this chapter and rules and regulations which may be adopted under Section 69-39-13.

HISTORY: Laws, 1993, ch. 581, § 5; reenacted without change, Laws, 2009, ch. 330, § 5, eff from and after July 1, 2009.

Editor's Notes — Former § 69-39-21, which provided for the repeal of this section, was repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

§ 69-39-11. Annual registration of liming products.

(1) Each separately identified product shall be registered once each year before being distributed in this state. The application for registration shall be submitted to the commissioner on forms furnished or approved by him. Upon approval by the commissioner, a copy of the registration shall be furnished to the applicant.

(2) A distributor shall not be required to register any brand of agricultural liming material that is already registered under this chapter by another person, providing the label does not differ in any respect.

HISTORY: Laws, 1993, ch. 581, § 6; reenacted without change, Laws, 2009, ch. 330, § 6, eff from and after July 1, 2009.

Editor's Notes — Former § 69-39-21, which provided for the repeal of this section, was repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

§ 69-39-13. Inspection and testing of liming materials; samples; procedures; distribution of results.

(1) It shall be the duty of the commissioner who may act through his authorized agent, to sample, inspect and submit to the State Chemist for analysis or test agricultural liming materials distributed within this state as he may deem necessary to determine whether such agricultural liming materials are in compliance with the provisions of this chapter. The commissioner, individually or through his agent, is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to agricultural liming material subject to the provisions of this chapter and regulations adopted pursuant thereto and to the records relating to the distribution of such materials.

(2) All samples of agricultural liming material drawn by the commissioner or his designated agent as official samples shall be forwarded to the State Chemist for analysis or test. The State Chemist shall perform all necessary analyses and tests and furnish the commissioner with an official laboratory report of his findings or determinations at no cost to the commissioner for such analyses, tests or reports.

(3) The methods of analysis and sampling shall be those approved by the commissioner and the State Chemist, and shall be guided by the Association of Official Analytical Chemists (AOAC) procedures.

(4) The results of official analyses of agricultural liming materials and portions of official samples shall be distributed by the State Chemist as provided by regulations adopted pursuant to this chapter at least annually.

HISTORY: Laws, 1993, ch. 581, § 7; reenacted without change, Laws, 2009, ch. 330, § 7, eff from and after July 1, 2009.

Editor's Notes — Former § 69-39-21, which provided for the repeal of this section, was repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

§ 69-39-15. Issuance of stop sale or use order for products sold in violation of chapter; release from order.

The commissioner may issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lot of agricultural liming material and to hold at a designated place when the commissioner finds such agricultural liming material is being offered or exposed for sale in violation of any of the provisions of this chapter or regulations adopted pursuant thereto until the law has been complied with and the agricultural liming material is released in writing by the commissioner or the violation has been otherwise legally disposed of by written authority. The commissioner shall release the agricultural liming material so withdrawn when the requirements of the provisions of this chapter or regulations adopted pursuant thereto have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

HISTORY: Laws, 1993, ch. 581, § 8; reenacted without change, Laws, 2009, ch. 330, § 8, eff from and after July 1, 2009.

Editor's Notes — Former § 69-39-21, which provided for the repeal of this section, was repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

§ 69-39-17. Penalties for violations of chapter; warnings.

(1) If upon official laboratory analysis, any agricultural liming material sold in this state is found to be below the labeled guarantee for calcium carbonate equivalent, neutralizing value, magnesium, available phosphorous, available potassium or above the labeled guarantee for moisture content or screening standards (fineness) as provided under terms of this chapter or regulations adopted hereunder, the commissioner shall impose a civil penalty as provided by regulation for the effective administration and enforcement of this chapter. Such civil penalty shall be assessed to the manufacturer/packer for packaged material and to the final seller holding a permit issued under terms of this chapter for material sold in bulk.

(2) When the commissioner determines that a person has violated terms of this chapter, other than subsection (1) of this section, depending upon the gravity of the offense, he shall assess a civil penalty in an amount not less than Two Hundred Dollars ($200.00) and not more than One Thousand Dollars ($1,000.00).

(3) All civil penalties assessed as provided herein shall be paid to the commissioner within thirty (30) days from the date of assessment. Penalties which are not paid in full within the prescribed thirty (30) days shall be considered delinquent and an additional penalty of ten percent (10%) of the balance due shall be added to the assessed penalty for each month such penalty continues to be delinquent.

(4) The commissioner is authorized to apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated hereunder notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

(5) Any person required by this chapter to obtain a permit from the commissioner before engaging in business, who shall engage in such business without having first obtained such license or shall engage in such business after such license shall have expired or shall have been revoked by the commissioner, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than Three Hundred Dollars ($300.00) and not more than Five Hundred Dollars ($500.00). Each day in violation shall constitute a separate offense.

(6) Nothing in this chapter shall be construed as requiring the commissioner or his representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of this chapter when he believes that the public interests are best served by a suitable notice or warning in writing.

HISTORY: Laws, 1993, ch. 581, § 9, eff from and after July 1, 1993; reenacted without change, Laws, 2009, ch. 330, § 9, eff from and after July 1, 2009.

Editor's Notes — Former § 69-39-21, which provided for the repeal of this section, was repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

§ 69-39-19. Promulgation of rules and regulations.

The commissioner may, with the approval of the Attorney General as provided in Section 69-1-25, promulgate such rules and regulations in accordance with the Mississippi Administrative Procedures Law as may be necessary for the effective enforcement of this chapter. The regulations shall have the full force and effect of law.

HISTORY: Laws, 1993, ch. 581, § 10; Laws, 2005, ch. 397, § 1; Laws, 2005, ch. 451, § 1; reenacted without change, Laws, 2009, ch. 330, § 10, eff from and after July 1, 2009.

Joint Legislative Committee Note — Section 1 of ch. 397 Laws, 2005, effective from and after July 1, 2005 (approved March 16, 2005), amended this section. Section 1 of ch. 451, Laws, 2005, effective from and after July 1, 2005 (approved March 29, 2005), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 451, Laws, 2005, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Notes — Former § 69-39-21, which provided for the repeal of this section, was repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

§ 69-39-21. Repealed.

Repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

§ 69-39-21. [Laws, 2005, ch. 397, § 2, Laws, 2005, ch. 451, § 2, eff from and after July 1, 2005.]

Editor's Notes — Former § 69-39-21 provided for the repeal of §§ 69-39-1 through 69-39-19.

CHAPTER 41.

MISSISSIPPI AGRIBUSINESS COUNCIL ACT OF 1993

Sec.
69-41-1. Short title.
69-41-3. Mississippi Agribusiness Council created; purpose.
69-41-5. Composition of council; co-participation with other persons and organizations; authorization of contracts and agreements; per diem, mileage and other expenses.
69-41-7. Executive director; qualifications; compensation; duties; staff.
69-41-9. Duties and responsibilities of council.
69-41-11. Council authorized to establish rules.
69-41-13. Authorization to accept and expend monies and in-kind contributions; Agribusiness Council Contribution Fund.
69-41-15 and 69-41-17. Repealed.
69-41-19. Agriculture Development Committee.

§ 69-41-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Agribusiness Council Act of 1993."

HISTORY: Laws, 1993, ch. 619, § 1; reenacted without change, Laws, 1998, ch. 536, § 1, eff from and after passage (approved April 9, 1998).

§ 69-41-3. Mississippi Agribusiness Council created; purpose.

There is created a special joint committee of the Legislature to be known as the Mississippi Agribusiness Council, hereinafter referred to as "the council," for the purposes of stimulating the development of new markets for Mississippi agricultural products and industry.

HISTORY: Laws, 1993, ch. 619, § 2; reenacted without change, Laws, 1998, ch. 536, § 2, eff from and after passage (approved April 9, 1998).

§ 69-41-5. Composition of council; co-participation with other persons and organizations; authorization of contracts and agreements; per diem, mileage and other expenses.

(1) The council shall be composed of the following members:

(a) The Chairman and Vice-Chairman of the Senate Agriculture Committee and five (5) additional members of the Senate, no more than two (2) members from one (1) congressional district. Upon recommendation by the Chairman of the Senate Agriculture Committee, the Lieutenant Governor shall appoint such five (5) additional members.

(b) The Chairman and Vice-Chairman of the House of Representatives Agriculture Committee and five (5) additional members of the House, no more than two (2) members from one (1) congressional district. Upon recommendation by the Chairman of the House of Representatives Agriculture Committee, the Speaker shall appoint such five (5) additional members.

(2) The Chairman of the Senate Agriculture Committee and the Chairman of the House of Representatives Agriculture Committee shall serve as Co-Chairmen of the council.

(3) In conducting the studies and formulating the recommendations required of it, the council may elicit the support of and participation by any commercial, industrial, governmental, agricultural, minority and public interest organizations or associations, or individual members thereof, and any federal, state and local agencies and political subdivisions as may be necessary, or appropriate in the furtherance of the activities of the council.

(4) In addition, the council shall be authorized to contract or enter into agreements with other agencies or private research centers that it may deem necessary to carry out its duties and functions.

(5) For attending meetings of the council, each legislative member shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session. However, no per diem and expenses shall be paid for attending meetings of the council while the Legislature is in session, and no per diem and expenses shall be paid without prior approval of the proper committee in the member's respective house. However, per diem and travel expenses incurred by members of the council which are not incurred for the purpose of attending regular council meetings may be paid out of funds appropriated to the Mississippi Agribusiness Council in the amount provided by Sections 5-1-45 and 25-3-41, Mississippi Code of 1972.

HISTORY: Laws, 1993, ch. 619, § 3; Laws, 1997, ch. 589, § 1; reenacted and amended, Laws, 1998, ch. 536, § 3, eff from and after passage (approved April 9, 1998).

§ 69-41-7. Executive director; qualifications; compensation; duties; staff.

The council may appoint a nonstate service executive director, herein called director, who shall be competent and qualified in the area of marketing and agriculture and who may receive as compensation for services an annual salary as set by the council, but not to exceed the annual salary of the Commissioner of Agriculture and Commerce. The director shall be the one-point information contact on agricultural production, management and marketing issues and shall be charged with the duty of knowing the role and responsible personnel in each agency on matters related to agriculture. The director, or a staff member as designated by the council, shall be directly responsible to the council for tasks assigned in the administration and implementation of programs developed by the council. The council may also employ such nonstate staff as necessary to perform the objectives of the council, whose salary shall be set by the council but not to exceed an amount recommended by the State Personnel Board.

HISTORY: Laws, 1993, ch. 619, § 4; Laws, 1997, ch. 589, § 2; reenacted and amended, Laws, 1998, ch. 536, § 4, eff from and after passage (approved April 9, 1998).

§ 69-41-9. Duties and responsibilities of council.

The duties and responsibilities of the council shall be the following:

(1) To conduct national and international market research to identify trade and investment opportunities;

(2) To identify joint ventures and licensing services;

(3) To conduct market studies to identify agricultural products that can be manufactured in Mississippi from materials and resources available in or to Mississippi for which a profitable and growing market exists;

(4) To recommend legislation to assist with financial packaging by utilizing all available fund resources provided by the State of Mississippi including, but not limited to, the Small Business Investment Act, Emerging Crop Fund and the Business Financial Investment Act;

(5) To establish a Mississippi Register of Mississippi Agricultural Producers for public policymaking purposes, and set criteria for listing therein;

(6) To recommend purchasing agreements between state institutions and Mississippi agricultural producers which shall not include suggested prices;

(7) To recommend the enactment of legislation organizing the state into marketing districts for the most effective and efficient use of marketing resources;

(8) To provide any other assistance and services necessary to accomplish the purposes of this chapter.

HISTORY: Laws, 1993, ch. 619, § 5; reenacted and amended, Laws, 1998, ch. 536, § 5, eff from and after passage (approved April 9, 1998).

Cross References — Emerging Crop Fund, see §§ 69-2-13 et seq.

§ 69-41-11. Council authorized to establish rules.

The council is authorized and empowered to promulgate rules required to carry out the provisions of this chapter.

HISTORY: Laws, 1993, ch. 619, § 6; reenacted and amended, Laws, 1998, ch. 536, § 6, eff from and after passage (approved April 9, 1998).

§ 69-41-13. Authorization to accept and expend monies and in-kind contributions; Agribusiness Council Contribution Fund.

The Mississippi Agribusiness Council is authorized and empowered to accept and expend monetary or in-kind contributions, gifts and grants to carry out the provisions of this chapter. Such contributions, gifts and grants shall be deposited into a special fund, hereby established in the State Treasury, to be known as the "Agribusiness Council Contribution Fund."

HISTORY: Laws, 1993, ch. 619, § 7; reenacted without change, Laws, 1998, ch. 536, § 7, eff from and after passage (approved April 9, 1998).

§§ 69-41-15 and 69-41-17. Repealed.

Repealed by Laws of 1998, ch. 536, § 11, eff from and after passage (approved April 9, 1998).

§ 69-41-15. [Laws, 1993, ch. 619, § 8; Laws, 1997, ch. 589, § 3, eff from and after July 1, 1997]

§ 69-41-17. [Laws, 1993, ch. 619, § 10, eff by operation of law upon passage (approved April 20, 1993)]

Editor's Notes — Former § 69-41-15 created the Agribusiness Advisory Committee and provided for membership and payment of expenses.

Former § 69-41-17 provided for a deferred repealed of Sections 69-41-1 through 69-1-15 on July 1, 1998.

§ 69-41-19. Agriculture Development Committee.

The Agriculture Development Committee is created and shall be composed of agriculture business leaders and farmers as are appointed by the Mississippi Agribusiness Council; one (1) of the members shall be a representative of Mississippi State University, and one (1) shall be a representative of Alcorn State University. The Development Committee shall work with the Mississippi Agribusiness Council in carrying out its duties and purposes. Members of the Development Committee shall serve without compensation.

HISTORY: Laws, 1997, ch. 589, § 4, eff from and after July 1, 1997.

CHAPTER 42.

PROGRAM TO ENCOURAGE GROWTH IN MISSISSIPPI AGRIBUSINESS INDUSTRY

Sec.
69-42-1. Definitions; development and implementation of program; purpose of program; annual report.

§ 69-42-1. Definitions; development and implementation of program; purpose of program; annual report.

(1) For the purposes of this section, the following words shall have the meanings ascribed in this section unless the context otherwise requires:

(a) "Agribusiness" means any agricultural, aquacultural, horticultural, manufacturing, research and development or processing enterprise or enterprises.

(b) "Farmer" means a resident of Mississippi who engages or wishes to engage in the commercial production of crops on land in Mississippi. The term shall include individuals, partnerships and corporations.

(2) The Mississippi Development Authority shall develop and implement a program to stimulate growth in the agricultural industry for agribusiness concerns and farmers.

(3) The program developed and implemented by the Mississippi Development Authority under this section shall:

(a) Increase the availability of financial assistance available to agribusiness concerns and farmers;

(b) Provide incentives for agribusiness concerns and farmers which will encourage growth in the Mississippi agricultural industry;

(c) Assist new agribusiness concerns and farmers in developing and implementing business plans;

(d) Develop methods for increasing markets for the goods and services of agribusiness concerns and farmers;

(e) Work with public and private entities in disseminating information about public and private programs that benefit agribusiness concerns and farmers; and

(f) Identify sources of financial assistance available to agribusiness concerns and farmers and assist agribusiness concerns and farmers with the preparation of applications for assistance from public and private sources.

(3)(a) The Mississippi Development Authority shall file an annual report with the Governor, the Secretary of the Senate and the Clerk of the House of Representatives not later than December 1 of each year, regarding the impact of the program created under this section on the agribusiness industry in Mississippi.

(b) The Mississippi Development Authority shall file an annual report with the Governor, the Secretary of the Senate and the Clerk of the House of

Representatives not later than December 1 of each year, with recommendations for any legislation necessary to accomplish the purposes of this section.

HISTORY: Laws, 2000, 2nd Ex Sess, ch. 1, § 52, eff from and after passage (approved Aug. 30, 2000).

Editor's Notes — Laws of 2000, 2nd Ex Sess, ch. 1, § 1 provides: "SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"

CHAPTER 43.

MISSISSIPPI RATITE COUNCIL AND PROMOTION BOARD

Sec.
69-43-1 through 69-43-11. Repealed.
69-43-13. Repeal date of Sections 69-43-1 through 69-43-11.

§§ 69-43-1 through 69-43-11. Repealed.

Repealed by Laws of 2004, ch. 383, § 7, eff from and after July 1, 2006.

§ 69-43-1. [Laws, 1997, ch. 375, § 1, eff from and after passage (approved March 18, 1997); reenacted without change, Laws, 2000, ch. 331, § 1; reenacted without change, Laws, 2004, ch. 383, § 1, eff from and after July 1, 2004.]

§ 69-43-3. [Laws, 1997, ch. 375, § 2, eff from and after passage (approved March 18, 1997); reenacted without change, Laws, 2000, ch. 331, § 2; reenacted without change, Laws, 2004, ch. 383, § 2, eff from and after July 1, 2004.]

§ 69-43-5. [Laws, 1997, ch. 375, § 3, eff from and after passage (approved March 18, 1997); reenacted without change, Laws, 2000, ch. 331, § 3; reenacted without change, Laws, 2004, ch. 383, § 3, eff from and after July 1, 2004.]

§ 69-43-7. [Laws, 1997, ch. 375, § 4, eff from and after passage (approved March 18, 1997); reenacted without change, Laws, 2000, ch. 331, § 4; reenacted without change, Laws, 2004, ch. 383, § 4, eff from and after July 1, 2004.]

§ 69-43-9. [Laws, 1997, ch. 375, § 5, eff from and after passage (approved March 18, 1997); reenacted without change, Laws, 2000, ch. 331, § 5; reenacted without change, Laws, 2004, ch. 383, § 5, eff from and after July 1, 2004.]

§ 69-43-11. [Laws, 1997, ch. 375, § 6, eff from and after passage (approved March 18, 1997); reenacted without change, Laws, 2000, ch. 331, § 6; reenacted without change, Laws, 2004, ch. 383, § 6, eff from and after July 1, 2004.]

Editor's Notes — Former §§ 69-43-1 through 69-43-11 related to the Mississippi Ratite Council and Promotion Board.

Cross References — For a definition of "ratite," see § 75-33-3(1)(g).

§ 69-43-13. Repeal date of Sections 69-43-1 through 69-43-11.

Sections 69-43-1 through 69-43-11, shall stand repealed on July 1, 2006.

HISTORY: Laws, 1997, ch. 375, § 7; Laws, 2000, ch. 331, § 7; Laws, 2004, ch. 383, § 7, eff from and after July 1, 2004.

CHAPTER 44.

MISSISSIPPI CORN PROMOTION BOARD

Sec.	
69-44-1.	Purpose.
69-44-3.	Mississippi Corn Promotion Board; membership; organization and administration; officers.
69-44-5.	Assessment on corn grown in state; corn promotion fund; records and reports.
69-44-7.	Penalties; exemption.
69-44-9.	Expenditure of funds; annual report of income and expenditures; penalty for failure to report.
69-44-11.	State Tax Commission to assist department in collecting assessments.
69-44-13.	Provisions to be controlling.
69-44-15.	Commissioner authorized to audit Corn Promotion Board; information to be included in audit; injunction for violations of chapter.

§ 69-44-1. Purpose.

The purpose of this chapter is to promote the growth and development of the corn industry in Mississippi by research, advertisement promotions and education and market development, thereby promoting the general welfare of the people of this state.

For purposes of this chapter:

(a) "Board" means the Mississippi Corn Promotion Board.

(b) "Department" means the Mississippi Department of Agriculture and Commerce.

HISTORY: Laws, 2006, ch. 512, § 1; brought forward without change, Laws, 2009, ch. 393, § 17, eff from and after July 1, 2009.

OPINIONS OF THE ATTORNEY GENERAL

The Department of Agriculture and Commerce may withhold 3.5% of the gross amount collected each month from assessments on corn sales and, with the approval of the Mississippi Corn Promotion Board, may "settle up" with the Board at the end of the fiscal year. Spell, February 2, 2007, A.G. Op. #07-00019, 2007 Miss. AG LEXIS 11.

There is no provision in Miss. Code Ann. § 69-44-1 et seq., addressing the interest earned on funds in the Mississippi Corn Promotion Fund. Absent a specific provision otherwise, interest earned on funds in the Mississippi Corn Promotion Fund must be credited to the State General Fund. Spell, February 2, 2007, A.G. Op. #07-00019, 2007 Miss. AG LEXIS 11.

§ 69-44-3. Mississippi Corn Promotion Board; membership; organization and administration; officers.

(1) The Mississippi Corn Promotion Board is hereby created, to be composed of twelve (12) members to be appointed by the Governor to serve terms of three (3) years. All of the twelve (12) members of the board shall be producers of corn in the State of Mississippi. Within ten (10) days following July 1, 2006, the Mississippi Farm Bureau Federation, Inc., the Mississippi

Feed and Grains Association, the Mississippi Corn Growers Association and the Delta Council shall each submit the names of six (6) corn producers to the Governor, and he shall appoint three (3) members from the nominees of each organization to serve on the board on rotating three-year terms. The original board shall be appointed with members of each of the organizations appointed as follows: one (1) for one (1) year, one (1) for two (2) years, and one (1) for three (3) years. Each year thereafter, not less than thirty (30) days prior to the expiration of the terms of expiring board members, the organizations shall submit the names of three (3) nominees to the Governor and succeeding boards shall be appointed by the Governor in the same manner, giving equal representation to each organization. Vacancies which occur shall be filled in the same manner as the original appointments were made.

(2) The members of the board shall meet and organize immediately after their appointment, and shall elect a chairman, vice chairman and secretary-treasurer from the membership of the board, whose duties shall be those customarily exercised by such officers or specifically designated by the board. The chairman, vice chairman and secretary-treasurer shall be bonded in an amount not less than Twenty Thousand Dollars ($20,000.00). The cost of the bonds shall be paid from the funds received under this chapter. The bond shall be a security for any illegal act of such member of the board and recovery thereon may be had by the state for any injury by the illegal act of the member. The board may establish rules and regulations for its own government and the administration of the affairs of the board.

HISTORY: Laws, 2006, ch. 512, § 2; brought forward without change, Laws, 2009, ch. 393, § 18, eff from and after July 1, 2009.

§ 69-44-5. Assessment on corn grown in state; corn promotion fund; records and reports.

(1) After July 1, 2006, there is imposed and levied an assessment at the rate of One Cent (1¢) per bushel on all corn grown within the State of Mississippi, and the assessment shall be deducted by the purchaser from the amount paid the producer at the first point of sale, whether within or without the state. If a producer pledges corn grown by that producer as collateral for a loan issued by the Commodity Credit Corporation and if that producer forfeits the corn in lieu of loan repayment, the Commodity Credit Corporation shall, at the time of the loan settlement, collect the assessment from the producer.

(2) The assessment imposed and levied by this section shall be payable to and collected by the department from the purchaser of the corn at the first point of sale or from the Commodity Credit Corporation as provided in subsection (1) of this section. The proceeds of the assessment collected by the department shall be deposited with the State Treasurer in a special fund to be established as the "Mississippi Corn Promotion Fund," and promptly remitted to a foundation under the terms and conditions as the board deems necessary to ensure that the assessments are used properly in carrying out the purposes of this chapter.

(3) The department shall submit to the board a budget detailing and justifying the administrative costs of the department in administering the provisions of this chapter. The budget must be approved by the board by April 1 of each year. The department shall pay over to the Mississippi Corn Promotion Fund the funds collected, less three and one-half percent (3-½%) of the gross amount collected. The amount withheld by the department must be approved by the board by July 1 of each year.

(4) Each purchaser or the Commodity Credit Corporation shall keep a complete and accurate record of all corn handled by him and shall furnish each producer with a signed sales slip showing the number of bushels purchased from him and the amount deducted by him for the Mississippi Corn Promotion Fund. The records shall be in the form and contain any other information as the department shall by rule or regulation prescribe. The records shall be preserved by the purchaser for a period of two (2) years and shall be offered for inspection at any time upon oral or written demand by the department or any duly authorized agent or representative thereof. Every purchaser or the Commodity Credit Corporation, at such time or times as the department may require, shall submit reports or other documentary information deemed necessary for the efficient and equitable collection of the assessment imposed in this chapter. The department shall have the power to cause any duly authorized agent or representative to enter upon the premises of any purchaser of corn and examine or cause to be examined by the agent only books, papers and records which deal in any way with the payment of the assessment or enforcement of the provisions of this chapter.

HISTORY: Laws, 2006, ch. 512, § 3; brought forward without change, Laws, 2009, ch. 393, § 19, eff from and after July 1, 2009.

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The term "foundation," as used in Miss. Code Ann. § 69-44-5, is not synonymous with, but may utilize services of, a bank or a banking institution's trust department. A foundation, as contemplated in the statute, would include a corporation or other similar entity organized and operated for the purposes set forth in that chapter, that is, to conduct a program of research, education and advertising designed to promote the corn industry in Mississippi. Spell, February 2, 2007, A.G. Op. #07-00019, 2007 Miss. AG LEXIS 11.

§ 69-44-7. Penalties; exemption.

(1) Any purchaser who fails to file a report or to pay any assessment within the time required by the department shall forfeit to the department a penalty of five percent (5%) of the assessment determined to be due, plus one percent (1%) of the amount for each month of delay or fraction thereof after the first month after the report was required to be filed or the assessment became due. The penalty shall be paid to the department and shall be disposed of by it in the same manner as funds derived from the payment of the assessment imposed herein.

(2) The department shall collect the penalties levied herein, together with the delinquent assessment, by any or all of the following methods:

(a) By voluntary payment by the person liable.

(b) By legal proceedings instituted in a court of competent jurisdiction.

(3) Any person required to pay the assessment provided for in this chapter who fails to remit same or who refuses to allow full inspection of the premises, or the books, records or other documents relating to the liability of the person for the assessment herein imposed, or who shall hinder or in any way delay or prevent the inspection, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding One Thousand Dollars ($1,000.00) or by imprisonment not to exceed one (1) year, or both.

(4) The provisions of this chapter shall not apply to any person who purchases one thousand (1,000) or fewer bushels of corn in any calendar year, provided he is not regularly engaged in the purchase of corn.

HISTORY: Laws, 2006, ch. 512, § 4; brought forward without change, Laws, 2009, ch. 393, § 20, eff from and after July 1, 2009.

Cross References — State Tax Commission to assist department in collecting assessments provided for in this chapter, see § 69-44-11.

§ 69-44-9. Expenditure of funds; annual report of income and expenditures; penalty for failure to report.

(1) The board shall plan and conduct a program of research, education and advertising designed to promote the corn industry in Mississippi. The board is authorized to use the funds derived from the assessment imposed herein for these purposes, including basic administration expenses of the plan. Use of these funds may be applied, as prescribed in this section, within or without the State of Mississippi, including regional, national and international research and promotional applications.

(2)(a) The Mississippi Legislature finds and declares that the factors which affect the ability of Mississippi corn farmers to market their crop are established by national and international forces in the world market. The Legislature further finds and declares that the expenditure of funds by the board for the purpose of influencing the development and implementation of national and international policy affecting the marketing of corn produced by Mississippi farmers is the expenditure of funds for a public purpose.

(b) The board may expend a portion of the funds received and administered by the board for the purpose of influencing the development and implementation of national and international policy affecting the marketing of corn produced by Mississippi farmers.

(c) The amount of funds expended by the board in each fiscal year for the purposes authorized in this subsection shall not exceed fifteen percent (15%) of the budget of the board for that fiscal year.

(d) The board shall not expend any funds for the purpose of influencing any political activity.

(3) A report of all income and expenditures shall be made annually on December 31, with four (4) copies of the report to be filed and presented during the regular sessions of the Mississippi Legislature with each of the following: the Chairman of the House of Representatives Agriculture Committee, the Chairman of the Senate Agriculture Committee, the Mississippi Department of Agriculture and Commerce and the State Auditor.

(4) If the board fails to make an annual report in violation of the provisions of subsection (3) of this section, the board shall be subject to a fine of not more than Five Hundred Dollars ($500.00).

HISTORY: Laws, 2006, ch. 512, § 5; Laws, 2009, ch. 393, § 21, eff from and after July 1, 2009.

§ 69-44-11. State Tax Commission to assist department in collecting assessments.

The State Tax Commission shall provide any information necessary to assist the department in collecting the assessments provided for in this chapter.

HISTORY: Laws, 2006, ch. 512, § 6; brought forward without change, Laws, 2009, ch. 393, § 22, eff from and after July 1, 2009.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 69-44-13. Provisions to be controlling.

Notwithstanding the provisions of any laws or parts of laws in conflict herewith, the provisions of this chapter shall be controlling to the extent of the conflict.

HISTORY: Laws, 2006, ch. 512, § 7; brought forward without change, Laws, 2009, ch. 393, § 23, eff from and after July 1, 2009.

§ 69-44-15. Commissioner authorized to audit Corn Promotion Board; information to be included in audit; injunction for violations of chapter.

(1) The commissioner may conduct an audit of the board to verify compliance with any rules and regulations promulgated for the efficient enforcement of this chapter.

(2) Under this section, the audited board shall provide information to the commissioner that verifies the amounts received and expended from the fees assessed and collected by the department and remitted to the board. Records maintained in the course of the normal conduct of business by the board may serve as verification.

(3) The commissioner may apply for and the court may grant a temporary or permanent injunction on disbursements made to the board from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under this chapter, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

HISTORY: Laws, 2009, ch. 393, § 24, eff from and after July 1, 2009.

CHAPTER 45.

MISSISSIPPI AGRICULTURAL PROMOTIONS PROGRAM ACT

Sec.

69-45-1. Short title.
69-45-3. Legislative findings.
69-45-5. Definitions.
69-45-7. Establishment of program to finance and promote agricultural economic development.
69-45-9. Purpose of chapter; duties of Division of Market Development.
69-45-11. Registration of participants; annual marketing assessment; funding promotions program.
69-45-13. Creation of Mississippi Agricultural Promotions Fund.
69-45-15. Unlawful use, reproduction or distribution of Program logo.

§ 69-45-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Agricultural Promotions Program Act."

HISTORY: Laws, 1999, ch. 509, § 9, eff from and after July 1, 1999.

§ 69-45-3. Legislative findings.

The Legislature finds that there is a need for a Mississippi Agricultural Promotions Program to increase consumer awareness and expand the market for Mississippi's agricultural products. The Legislature further finds that the Mississippi Department of Agriculture and Commerce, through, but not limited to, product identification programs and subsidies, loans and grants, shall promote and advertise such products.

HISTORY: Laws, 1999, ch. 509, § 10, eff from and after July 1, 1999.

§ 69-45-5. Definitions.

For the purposes of this chapter, the following terms shall have the following meanings:

(a) "Commissioner" means the Commissioner of Agriculture and Commerce.

(b) "Department" means the Department of Agriculture and Commerce.

(c) "Person" means an individual, firm, partnership, corporation, association, business, trust, legal representative or any other business unit.

(d) "Reproduce" means to stencil, emboss, print, engrave, impress, imprint, lithograph or duplicate in any manner or to cause any such acts to be done.

(e) "Agricultural product" means any product that is at least fifty-one percent (51%) grown, processed or manufactured in the State of Mississippi.

(f) "Division" means the Division of Market Development within the Department of Agriculture and Commerce.

The words "logo" and "program," whenever used in this chapter, shall include the plural as well as the singular.

HISTORY: Laws, 1999, ch. 509, § 11; Laws, 2014, ch. 356, § 1, eff from and after passage (approved Mar. 17, 2014).

§ 69-45-7. Establishment of program to finance and promote agricultural economic development.

The department, in its discretion, may establish a program of grants, loans and subsidies to be matched by agricultural entities in the state to finance and promote agricultural economic development.

HISTORY: Laws, 1999, ch. 509, § 12, eff from and after July 1, 1999.

§ 69-45-9. Purpose of chapter; duties of Division of Market Development.

(1) The purpose of this chapter is to authorize the division to establish and coordinate the Mississippi Agricultural Promotions Program. The duties of the division shall include, but are not limited to:

(a) Developing a logo and authorizing the use of that logo;

(b) Developing a program for loans, grants and subsidies;

(c) Registering participants;

(d) Requesting and collecting reimbursements from program participants;

(e) Promoting and advertising Mississippi and its agricultural products through the purchase of promotional items;

(f) Developing in-kind advertising programs and promotional materials; and

(g) Contracting with media representatives for the purpose of dispersing promotional materials.

(2) The commissioner shall promulgate rules necessary to implement the provisions of this chapter.

HISTORY: Laws, 1999, ch. 509, § 13, eff from and after July 1, 1999.

§ 69-45-11. Registration of participants; annual marketing assessment; funding promotions program.

(1) Any person or business who participates in the Mississippi Agricultural Promotions Program shall register annually with the department on forms prescribed by the department. The department is authorized to charge an annual marketing assessment to defray costs and expenses associated with the program. The department serves to promote agriculture products in the state; thus, it assumes no legal liability by registering these persons or businesses.

(2)(a) The department may accept, budget, receive and expend funds from any source to implement, market and promote the program;

(b) The department may allow a federal, state or local governmental entity or a public, private, commercial or charitable entity to use, publish or advertise the entity's name on department property in its publications;

(c) Any funds received from this advertising shall be retained by the department and expended to market and promote the Mississippi Agricultural Promotions Program; and

(d) The department may accept, budget, receive and expend these funds in accordance with rules and regulations of the Department of Finance and Administration in the manner consistent with the escalation of federal funds.

HISTORY: Laws, 1999, ch. 509, § 14; Laws, 2016, ch. 320, § 1, eff from and after passage (approved Apr. 4, 2016).

§ 69-45-13. Creation of Mississippi Agricultural Promotions Fund.

There is created a special fund to be designated as the "Mississippi Agricultural Promotions Fund" within the State Treasury to receive all monies related to the Mississippi Agricultural Promotions Program. Monies deposited in the fund shall be expended, upon legislative appropriations, and upon requisition therefor by the Commissioner of Agriculture, for the purposes of implementing, marketing and promoting the Mississippi Agricultural Promotions Program. Unexpended amounts remaining in the fund at the end of the fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the fund shall be deposited to the credit of the fund.

HISTORY: Laws, 1999, ch. 509, § 15; Laws, 2016, ch. 320, § 2, eff from and after passage (approved Apr. 4, 2016).

§ 69-45-15. Unlawful use, reproduction or distribution of Program logo.

It is unlawful for any person to use, reproduce or distribute the logo of the Mississippi Agricultural Promotions Program without being registered with the department or to otherwise violate the provisions of this chapter or any rules adopted under this chapter. Any person who violates any of the provisions of this chapter or any rule promulgated under this chapter revokes his rights for logo use or any funding hereunder.

HISTORY: Laws, 1999, ch. 509, § 16, eff from and after July 1, 1999.

CHAPTER 46.

MISSISSIPPI LAND, WATER AND TIMBER RESOURCES ACT

Sec.

69-46-1. Short title.

69-46-3. Mississippi Land, Water and Timber Resources Board; creation; purpose; composition; meetings.

69-46-5. Powers and duties of board.

69-46-7. Mississippi Land, Water and Timber Resources Fund; expenditures; authorization for borrowing in anticipation of bonds.

§ 69-46-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Land, Water and Timber Resources Act."

HISTORY: Laws, 2000, 2nd Ex Sess, ch. 1, § 53, eff from and after passage (approved Aug. 30, 2000).

Editor's Notes — Laws of 2000, 2nd Ex Sess, ch. 1, § 1 provides:
"SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"

§ 69-46-3. Mississippi Land, Water and Timber Resources Board; creation; purpose; composition; meetings.

(1) There is created the Mississippi Land, Water and Timber Resources Board, hereinafter referred to as "the board," for the purpose of assisting Mississippi agricultural industry in the development, marketing and distribution of agricultural products.

(2) The board shall be composed of the following members:

(a) The Chairman of the Senate Agriculture Committee, or a member of the Senate Agriculture Committee designated by the chairman, as a nonvoting member;

(b) The Chairman of the House of Representatives Agriculture Committee or a member of the House of Representatives Agriculture Committee designated by the chairman, as a nonvoting member;

(c) The Chairman of the Senate Forestry Committee, or a member of the Senate Forestry Committee designated by the chairman, as a nonvoting member;

(d) The Executive Director of the Mississippi Development Authority, or his designee;

(e) The Commissioner of the Mississippi Department of Agriculture and Commerce, or his designee;

(f) The President of the Mississippi Farm Bureau Federation, or his designee;

(g) The Director of the Cooperative Extension Service at Mississippi State University, or his designee;

(h) The Executive Director of the Agribusiness and Natural Resource Development Center at Alcorn State University, or his designee;

(i) The Director of the Agricultural Finance Division of the Mississippi Development Authority, or his designee;

(j) The Director of the Agriculture Marketing Division of the Mississippi Department of Agriculture and Commerce, or his designee;

(k) The Executive Director of the Mississippi Forestry Commission, or his designee; and

(*l*) Three (3) individuals appointed by the Governor who are active producers of Mississippi land, water or timber commodities. The Governor shall appoint one (1) such person from each Supreme Court district.

(3) The Executive Director of the Mississippi Development Authority and the Commissioner of the Mississippi Department of Agriculture and Commerce shall serve as co-chairmen of the board.

(4) The board shall meet at least once each calendar quarter at the call of the co-chairmen. A majority of the members of the board shall constitute a quorum at all meetings. An affirmative vote of a majority of the members present and voting is required in the adoption of any actions taken by the board. All members must be notified, in writing, of all regular and special meetings of the board, which notices must be mailed at least ten (10) days before the dates of the meetings. All meetings shall take place at the State Capitol in Jackson, Mississippi. The board shall provide a copy of the minutes of each of its meetings to the Chairman of the Senate Agriculture Committee and the Chairman of the House of Representatives Agriculture Committee.

(5) Members of the board shall not receive compensation. However, each member may be paid travel expenses and meals and lodging expenses as provided in Section 25-3-41, for such expenses incurred in furtherance of their duties. Travel expenses and meals and lodging expenses and other necessary expenses incurred by the board shall be paid out of funds appropriated to the Mississippi Development Authority.

(6) In carrying out the provisions of the Mississippi Land, Water and Timber Resources Act, the board may utilize the services, facilities and personnel of all departments, agencies, offices and institutions of the state, and all such departments, agencies, offices and institutions shall cooperate with the board in carrying out the provisions of such act.

HISTORY: Laws, 2000, 2nd Ex Sess, ch. 1, § 54, eff from and after passage (approved Aug. 30, 2000).

Editor's Notes — Laws of 2000, 2nd Ex Sess, ch. 1, § 1 provides:
"SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"

§ 69-46-5. Powers and duties of board.

The board shall have the following powers and duties:

(a) To develop marketing plans and opportunities for independent farmers in Mississippi;

(b) To encourage the commercialization of new agricultural technology businesses;

(c) To initiate the development of processing facilities for Mississippi agricultural commodities;

(d) To initiate the development of Mississippi wholesale distribution businesses for agricultural inputs and products;

(e) To promote the development of institutional and specialty markets for Mississippi agriculture products;

(f) To encourage additional research for new agricultural product development;

(g) To develop a working relationship with the state offices of the United States Department of Agriculture as may be appropriate for the promotion and development of agriculture in Mississippi;

(h) To promote the rural quality of life in Mississippi through such programs as 4-H, Future Farmers of America and agricultural education;

(i) To encourage, promote and initiate the development of alternative energy strategies, applied research technologies and commercialization enterprises that focus on Mississippi natural resources, including, but not limited to, agriculture, timber and poultry products and byproducts;

(j) To file an annual report with the Governor, Secretary of the Senate and the Clerk of the House of Representatives not later than December 1 of each year, with recommendations for any legislation necessary to accomplish the purposes of the Mississippi Land, Water and Timber Resources Act;

(k) The board may promulgate and enforce rules and regulations, in accordance with the Mississippi Administrative Procedures Law, as may be necessary to carry out the provisions of the Mississippi Land, Water and Timber Resources Act;

(*l*) To expend funds out of the Mississippi Land, Water and Timber Resources Fund to carry out its powers and duties under the Mississippi Land, Water and Timber Resources Act;

(m) The board may provide funds to public entities and private entities through loans, grants, contracts and any other manner the board determines appropriate for the purposes of carrying out the provisions of the Mississippi Land, Water and Timber Resources Act.

HISTORY: Laws of 2000, 2nd Ex Sess, ch. 1, § 55; Laws, 2001, ch. 538, § 17; Laws, 2002, ch. 411, § 1; Laws, 2002, ch. 542, § 17, eff from and after passage (approved Apr. 9, 2002.).

Joint Legislative Committee Note — Section 1 of ch. 411, Laws, 2002, effective from and after passage (approved March 19, 2002), amended this section. Section 17 of ch. 542, Laws, 2002, effective from and after passage (approved April 9, 2002) also amended this section. As set out above, this section reflects the language of Section 17 of ch. 542, Laws, 2002, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall superseded all other amendments to the same section approved on an earlier date.

Editor's Notes — Laws of 2000, 2nd Ex Sess, ch. 1, § 1 provides: "SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"

OPINIONS OF THE ATTORNEY GENERAL

The Mississippi Land, Water and Timber Resources Board may contract with a private entity if that contract will further the purposes and duties of the board; an agreement with a private entity may be in the form of a contract for services or in the form of a grant, but, in either case, the contract or grant agreement should set out in reasonable detail the services and functions which will be performed by the private entity on behalf of the board. Spell, Jr., Feb. 1, 2002, A.G. Op. #02-0027.

The Land, Water and Timber Resources Board can enter into a loan or grant agreement for administration and disbursement of funds with a regional planning and development district, which are private entities often utilized as conduits for grants to small businesses for the purpose of job creation and small business development; further, the Land, Water and Timber Resources Board can make loans or grants for specific projects to certain local governmental entities as are empowered to administer same, such as a county economic development district. Spell, Jr., Apr. 25, 2002, A.G. Op. #02-0226.

While the language in subsection (i) of this section grants fairly broad authority to the Mississippi Land, Water and Timber Resources Board does not grant the authority to the Board to merely fund the purchase of equipment utilizing existing forms of energy. The Board has the power to enact regulations which further define and clarify the terms "alternative energy" and "Mississippi natural resources." Spell, Aug. 8, 2003, A.G. Op. 03-0373.

The Land, Water and Timber Resources Board has the authority to loan to a purchaser a portion of the purchase price of the facility. Speed, Apr. 15, 2005, A.G. Op. 05-0191.

§ 69-46-7. Mississippi Land, Water and Timber Resources Fund; expenditures; authorization for borrowing in anticipation of bonds.

(1)(a) The Mississippi Land, Water and Timber Resources Board may accept and expend funds appropriated or otherwise made available by the Legislature and funds from any other source in order to carry out the provisions of the Mississippi Land, Water and Timber Resources Act. Such funds shall be deposited into a special fund hereby established in the State Treasury to be known as the "Mississippi Land, Water and Timber Resources Fund." Unexpended amounts derived from bond proceeds or private funds, or both, remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any investment earnings or interest earned on such amounts in the fund shall be deposited to the credit of the fund. All other unexpended amounts remaining in the fund at the end of a fiscal year shall lapse into the State General Fund. The board may provide to the Mississippi Department of Agriculture and Commerce not more than Two Hundred Fifty Thousand Dollars ($250,000.00), in the aggregate, of monies in the fund that are derived from proceeds of bonds issued under Sections 1 through 16 of Chapter 538, Laws of 2001, and/or Sections 1 through 16 of Chapter 542, Laws of 2002, for the purpose of providing additional funds to defray costs incurred by the department in assisting the board in carrying out the provisions of the Mississippi Land, Water and Timber Resources Act.

However, the Mississippi Department of Agriculture and Commerce may not use any portion of such funds for the purpose of hiring any personas an employee as defined in Section 25-3-91(c). The Mississippi Department of Agriculture may escalate its budget and expend such funds, when provided by the board, in accordance with rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds. The board may provide to the Mississippi Development Authority not more than Two Hundred Fifty Thousand Dollars ($250,000.00), in the aggregate, of monies in the fund that are derived from proceeds of bonds issued under Sections 1 through 16 of Chapter 538, Laws of 2001, and/or Sections 1 through 16 of Chapter 542, Laws of 2002, for the purpose of providing additional funds to defray costs incurred by the Mississippi Development Authority in assisting the board in carrying out the provisions of the Mississippi Land, Water and Timber Resources Act. However, the Mississippi Development Authority may not use any portion of such funds for the purpose of hiring any person as an employee as defined in Section 25-3-91(c). The Mississippi Development Authority may escalate its budget and expend such funds, when provided by the board, in accordance with rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds.

(b)(i) The Mississippi Land, Water and Timber Resources Board may provide to the Mississippi Department of Agriculture and Commerce not more than One Hundred Twenty-five Thousand Dollars ($125,000.00), in the aggregate, of monies in the fund that a rederived from proceeds of bonds issued under Sections 1 through 16 of Chapter 505, Laws of 2003, and One Hundred Twenty-five Thousand Dollars ($125,000.00), in the aggregate, of monies in the fund that are derived from proceeds of bonds issued under Sections 72 through 87 of Chapter 1 of Laws of 2004, Third Extraordinary Session, for the purpose of providing additional funds to defray costs incurred by the department in assisting the board in carrying out the provisions of the Mississippi Land, Water and Timber Resources Act. However, the Mississippi Department of Agriculture and Commerce may not use any portion of such funds for the purpose of hiring any person as an employee as defined in Section 25-3-91(c). The Mississippi Department of Agriculture and Commerce may escalate its budget and expend such funds, when provided by the board, in accordance with rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds.

(ii) The Mississippi Land, Water and Timber Resources Board may provide to the Mississippi Development Authority not more than One Hundred Twenty-five Thousand Dollars ($125,000.00), in the aggregate, of monies in the fund that are derived from proceeds of bonds issued under Sections 1 through 16 of Chapter 505, Laws of 2003, and One Hundred Twenty-five Thousand Dollars ($125,000.00), in the aggregate, of monies in the fund that are derived from proceeds of bonds issued under Sections 72 through 87 of Chapter 1 of Laws of 2004, Third Extraordinary Session, for the purpose of providing additional funds to defray costs incurred by the Mississippi Development Authority in assisting the board in carrying out the provisions of the Mississippi Land, Water and Timber Resources Act. However, the Mississippi Development Authority may not use any portion of such funds for the purpose of hiring any person as an employee as defined in Section 25-3-91(c). The Mississippi Development Authority may escalate its budget and expend such funds, when provided by the board, in accordance with rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds.

(iii) The Mississippi Land, Water and Timber Resources Board may provide to the Department of Audit not more than Fifty Thousand Dollars ($50,000.00), in the aggregate, of monies in the fund that are derived from proceeds of bonds issued under Sections 1 through 16 of Chapter 505, Laws of 2003, and Fifty Thousand Dollars ($50,000.00), in the aggregate, of monies in the fund that are derived from proceeds of bonds issued under Sections 72 through 87 of Chapter 1 of Laws of 2004, Third Extraordinary Session, for the purpose of providing additional funds to defray costs incurred by the department in assisting the board in carrying out the provisions of the Mississippi Land, Water and Timber Resources Act. However, the Department of Audit may not use any portion of such funds for the purpose of hiring any person as an employee as defined in Section 25-3-91(c). The Department of Audit may escalate its budget and expend such funds, when provided by the board, in accordance with rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds.

(2) The Mississippi Land, Water and Timber Resources Board shall set aside One Million Dollars ($1,000,000.00) of the monies in the Mississippi Land, Water and Timber Resources Fund, that are derived from proceeds of bonds issued under Sections 1 through 16 of Chapter 505, Laws of 2003, for the purpose of providing funds to the Mississippi Department of Agriculture and Commerce for use in making payments to ethanol producers under Section 69-51-5 during the State Fiscal Year beginning July 1, 2003, and ending June 30, 2004. Any monies set aside which are not used for such purposes during the fiscal year shall no longer be set aside for such purposes after the end of the fiscal year. In addition, if the Commissioner of Agriculture and Commerce determines during such fiscal year that no ethanol producer will be eligible for such payments during the fiscal year, the commissioner shall inform the board of his determination and the monies set aside shall no longer be set aside for such purposes. The Mississippi Department of Agriculture and Commerce may escalate its budget and expend funds, when provided by the board under this subsection (2), in accordance with rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds.

(3) In anticipation of the issuance of bonds authorized for the purpose of providing funds for the Mississippi Land, Water and Timber Resources Fund,

the State Bond Commission is authorized to negotiate and enter into any purchase, loan, credit or other agreement with any bank, trust company or other lending institution or to issue and sell interim notes for the purpose of carrying out the provisions of the Mississippi Land, Water and Timber Resources Act. All borrowings made under this subsection (3) shall be evidenced by notes of the State of Mississippi, which shall be issued from time to time, for such amounts, in such form and in such denomination and subject to such terms and conditions of sale and issuance, prepayment or redemption and maturity, rate or rates of interest not to exceed the maximum rate authorized for bonds in Section 75-17-101, and time of payment of interest as the State Bond Commission shall agree to in such agreement. Such notes shall constitute general obligations of the State of Mississippi, and shall be backed by the full faith and credit of the state. Such notes may also be issued for the purpose of refunding previously issued notes. No note shall mature more than three (3) years following the date of its issuance. The State Bond Commission is authorized to provide for the compensation of any purchaser of the notes by payment of a fixed fee or commission and for all other costs and expenses of issuance and service, including paying agent costs. Such costs and expenses may be paid from the proceeds of the notes. Borrowings made under the provisions of this subsection (3) shall not exceed the aggregate sum of Five Million Dollars ($5,000,000.00) outstanding at any one time.

HISTORY: Laws, 2000, 2nd Ex Sess, ch. 1, § 56; Laws, 2002, ch. 542, § 18; Laws, 2003, ch. 505, § 17; Laws, 2004, 3rd Ex Sess., ch. 1, § 88, eff from and after passage (approved November 24, 2004).

Editor's Notes — Laws of 2001, ch. 538, §§ 1 through 16 authorize the issuance of general obligation bonds for the purpose of providing funds for the Mississippi Land, Water and Timber Resources Fund.

Laws of 2000, 2nd Ex Sess, ch. 1, § 1 provides:

"SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"

Laws of 2004, 3rd Ex Sess, ch. 1, § 228 provides:

"SECTION 228. Except as otherwise provided in this act, any entity using funds authorized and made available under Chapter 1, 2004 Third Extraordinary Session, is authorized, in its discretion, to set aside not more than twenty percent (20%) of such funds for expenditure with small business concerns owned and controlled by socially and economically disadvantaged individuals. The term "socially and economically disadvantaged individuals" shall have the meaning ascribed to such term under Section 8(d) of the Small Business Act (15 USCS, Section 637(d)) and relevant subcontracting regulations promulgated pursuant thereto; except that women shall be presumed to be socially and economically disadvantaged individuals for the purposes of this section."

CHAPTER 47.

ORGANIC CERTIFICATION PROGRAM

Sec.
69-47-1. Repealed.
69-47-3. Repealed.
69-47-5 through 69-47-9. Repealed.
69-47-11. Recertification after removal from organic management.
69-47-13. Repealed.
69-47-15. Audits.
69-47-17 through 69-47-23. Repealed.
69-47-25. Inspection and renewal fees.
69-47-27. Repealed.
69-47-29 and 69-47-31. Repealed.
69-47-33. Repealed.

§ 69-47-1. Repealed.

Repealed by Laws of 2011, ch. 482, § 13, effective July 1, 2013.

§ 69-47-1. [Laws, 2000, ch. 600, § 1; Laws, 2003, ch. 480, § 1; Laws, 2011, ch. 482, § 1, eff from and after passage (approved Apr. 4, 2011.)]

Editor's Notes — Former § 69-47-1 provided definitions of terms used in Chapter 47, Title 69.

§ 69-47-3. Repealed.

Repealed by Laws of 2011, ch. 482, § 11, effective from and after passage (Approved April 4, 2011).

§ 69-47-3. [Laws, 2000, ch. 600, § 2; Laws, 2003, ch. 480, § 2, eff from and after July 1, 2003.]

Editor's Notes — Section 11 of Chapter 482, Laws of 2011, repealed this section, effective upon passage (April 4, 2011). Section 13 of Chapter 482 provided for the repeal of Sections 1 through 12 of the act, effective July 1, 2013. The co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation determined that the repealer contained in Section 13 of Chapter 482 has no effect on the repeal of this section, and the section is repealed effective April 4, 2011.

§§ 69-47-5 through 69-47-9. Repealed.

Repealed by Laws of 2011, ch. 482, § 13, effective July 1, 2013.

§ 69-47-5. [Laws, 2000, ch. 600, § 3; Laws, 2003, ch. 480, § 3; Laws, 2004, ch. 497, § 1; Laws, 2011, ch. 482, § 2, eff from and after passage (approved Apr. 4, 2011.)]

§ 69-47-7. [Laws, 2000, ch. 600, § 4; Laws, 2011, ch. 482, § 3, eff from and after passage (approved Apr. 4, 2011.)]

§ 69-47-9. [Laws, 2000, ch. 600, § 5; Laws, 2011, ch. 482, § 4, eff from and after passage (approved Apr. 4, 2011.)]

Editor's Notes — Former § 69-47-5 pertained to the certification required for the sale of organic food.

Former § 69-47-7 required producers to avoid pesticides or other contaminating residues on agricultural products sold or labeled organic.

Former § 69-47-9 provided that only crops that had been free from use of prohibited pesticides for at least three years could be certified as organic and provided for a "transition to organic" certification during that three-year period.

§ 69-47-11. Recertification after removal from organic management.

If a certified farm, field or greenhouse unit is removed from organic management, it may be recertified after passage of three (3) years without the application of a prohibited pesticide and two (2) years without the application of a prohibited fertilizer or other prohibited material.

HISTORY: Laws, 2000, ch. 600, § 6, eff from and after July 1, 2000.

§ 69-47-13. Repealed.

Repealed by Laws of 2011, ch. 482, § 13, effective July 1, 2013.

§ 69-47-13. [Laws, 2000, ch. 600, § 7; Laws, 2011, ch. 482, § 5, eff from and after passage (approved Apr. 4, 2011.)]

Editor's Notes — Former § 69-47-13 pertained to records to be kept by producers making application for certification.

§ 69-47-15. Audits.

(1) The department may conduct or provide for audits of all documents used to verify that certified products meet organic standards.

(2) These audits shall include, where appropriate:

(a) An inventory audit, a listing of the formulations of the product, percent accuracy in labeling, the amount bought and sold per product and producer or destination and the number of vendors and amount of product per vendor; or

(b) A farm audit, listing the amounts sold per product, date and destination and the area and location planted of each product with dates of harvest.

(3) Information contained in audit records that is exempt under the Public Records Act of Mississippi shall remain confidential. Such exempt confidential information shall include, but not be limited to:

(a) Information that, if released, would give advantage to competitors or bidders; and

(b) Trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.

HISTORY: Laws, 2000, ch. 600, § 8, eff from and after July 1, 2000.

Cross References — Public access to public records, see §§ 25-61-1 et seq.

§§ 69-47-17 through 69-47-23. Repealed.

Repealed by Laws of 2011, ch. 482, § 13, effective July 1, 2013.

§ 69-41-17. [Laws, 2000, ch. 600, § 9; Laws, 2004, ch. 497, § 2; Laws, 2011, ch. 482, § 6, eff from and after passage (approved Apr. 4, 2011.)]

§ 69-41-19. [Laws, 2000, ch. 600, § 10; Laws, 2011, ch. 482, § 7, eff from and after passage (approved Apr. 4, 2011.)]

§ 69-41-21. [Laws, 2000, ch. 600, § 11; Laws, 2011, ch. 482, § 8, eff from and after passage (approved Apr. 4, 2011.)]

§ 69-41-23. [Laws, 2000, ch. 600, § 12; Laws, 2011, ch. 482, § 9, eff from and after passage (approved Apr. 4, 2011.)]

Editor's Notes — Former § 69-47-17 pertained to applications for certification.

Former § 69-47-19 pertained to conditions applicable to the retail sale of organic products and requirements regarding the prevention of commingling of organic and nonorganic products.

Former § 69-47-21 prohibited the certification of drugs or drug ingredients under Chapter 47, Title 69, or the use of a Mississippi certified organic mark on any product or ingredient that is regulated as a drug.

Former § 69-47-23 pertained to inspections of certified productions, processors, retailers, distributors and applicants for certification during times when normal production, post-harvest or sales activity could be observed.

§ 69-47-25. Inspection and renewal fees.

(1) The department shall establish a fee schedule for application, inspection and annual certification fees. The fee schedule shall be provided to all persons inquiring about the application process.

(2) Producers and processors participating in the department's organic certification program will be charged an inspection fee and an annual certification fee. Retailers and distributors shall be charged an application fee for the initial inspection conducted by the department in accordance with this chapter and the regulations.

HISTORY: Laws, 2000, ch. 600, § 13; Laws, 2004, ch. 497, § 3, eff from and after passage (approved May 4, 2004).

§ 69-47-27. Repealed.

Repealed by Laws of 2011, ch. 482, § 13, effective July 1, 2013.

§ 69-47-27. [Laws, 2000, ch. 600, § 14; Laws, 2011, ch. 482, § 10, eff from and after passage (approved Apr. 4, 2011.)]

Editor's Notes — Former § 69-47-27 defined prohibited acts for purposes of this chapter.

§§ 69-47-29 and 69-47-31. Repealed.

Repealed by Laws of 2003, ch. 480 § 4, eff from and after July 1, 2003.

§ 69-47-29. [Laws, 2000, ch. 600, § 15, eff from and after July 1, 2000.]

§ 69-47-31. [Laws, 2000, ch. 600, § 16, eff from and after July 1, 2000.]

Editor's Notes — Former § 69-47-29 was entitled "Penalties for violating provision of chapter."

Former § 69-47-31 was entitled "Administrative proceedings."

§ 69-47-33. Repealed.

Repealed by Laws of 2011, ch. 482, § 12, effective from and after passage (Approved April 4, 2011).

§ 69-47-33. [Laws, 2003, ch. 480, § 5, eff from and after July 1, 2003.]

Editor's Notes — Section 12 of Chapter 482, Laws of 2011, repealed this section, effective upon passage (April 4, 2011). Section 13 of Chapter 482 provided for the repeal of Sections 1 through 12 of the act, effective July 1, 2013. The co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation determined that the repealer contained in Section 13 of Chapter 482 has no effect on the repeal of this section, and the section is repealed effective April 4, 2011.

Former § 69-47-33 authorized the Department of Agriculture and Commerce to develop an organic certification program for organic meat, organic fish, organic poultry and organic seafood.

CHAPTER 48.

PEANUT PROMOTION BOARD

Sec.

69-48-1.	Purpose of chapter; definitions.
69-48-3.	Mississippi Peanut Promotion Board; membership; organization and administration; officers.
69-48-5.	Assessment on peanuts grown in state; peanut promotion fund; records and reports.
69-48-7.	Department authorized to collect assessment created by Peanut Promotion, Research and Consumer Information Act.
69-48-9.	Penalties; exemption.
69-48-11.	Expenditure of funds; reporting requirement; penalty for failure to report.
69-48-13.	State Tax Commission to assist department in collecting assessments.
69-48-14.	Commissioner authorized to audit Peanut Promotion Board; information to be included in audit; injunction for violations of chapter.
69-48-15.	Provisions to be controlling.

§ 69-48-1. Purpose of chapter; definitions.

The purpose of this chapter is to promote the growth and development of the peanut industry in Mississippi by research, advertisement promotions and education and market development, thereby promoting the general welfare of the people of this state.

For purposes of this chapter:

(a) "Board" means the Mississippi Peanut Promotion Board.

(b) "Department" means the Mississippi Department of Agriculture and Commerce.

HISTORY: Laws, 2007, ch. 321, § 1; brought forward without change, Laws, 2009, ch. 392, § 1, eff from and after July 1, 2009.

Cross References — Beef promotion and research program, see §§ 69-8-1 et seq.
Soybean promotion board, see §§ 69-9-1 et seq.
Rice promotion board, see §§ 69-10-1 et seq.
Dairy Promotion Act, see §§ 69-35-1 et seq.
Corn promotion board, see §§ 69-44-1.

§ 69-48-3. Mississippi Peanut Promotion Board; membership; organization and administration; officers.

(1) The Mississippi Peanut Promotion Board is hereby created, to be composed of six (6) members to be appointed by the Governor to serve terms of three (3) years. All of the six (6) members of the board shall be producers of peanuts in the State of Mississippi. Within ten (10) days following July 1, 2007, the Mississippi Farm Bureau Federation, Inc., and the Mississippi Peanut Growers Association shall each submit the names of six (6) peanut producers to the Governor, and he shall appoint three (3) members from the nominees of each organization to serve on the board on rotating three-year terms. The

original board shall be appointed with members of each of the organizations appointed as follows: one (1) for one (1) year, one (1) for two (2) years, and one (1) for three (3) years. Each year thereafter, not less than thirty (30) days prior to the expiration of the terms of expiring board members, the organizations shall submit the names of three (3) nominees to the Governor and succeeding boards shall be appointed by the Governor in the same manner, giving equal representation to each organization. Vacancies which occur shall be filled in the same manner as the original appointments were made.

(2) The members of the board shall meet and organize immediately after their appointment, and shall elect a chairman, vice chairman and secretary-treasurer from the membership of the board, whose duties shall be those customarily exercised by such officers or specifically designated by the board. The chairman, vice chairman and secretary-treasurer shall be bonded in an amount not less than Twenty Thousand Dollars ($20,000.00). The cost of the bonds shall be paid from the funds received under this chapter. The bond shall be a security for any illegal act of such member of the board and recovery thereon may be had by the state for any injury by the illegal act of the member. The board may establish rules and regulations for its own government and the administration of the affairs of the board.

HISTORY: Laws, 2007, ch. 321, § 2; brought forward without change, Laws, 2009, ch. 392, § 2, eff from and after July 1, 2009.

§ 69-48-5. Assessment on peanuts grown in state; peanut promotion fund; records and reports.

(1)(a) There is imposed and levied an assessment at the rate of Two Dollars and Fifty Cents ($2.50) per ton net weight on all peanuts grown within the State of Mississippi or delivered to the first point of sale within the State of Mississippi. The assessment shall be deducted by the purchaser from the amount paid the producer at the first point of sale, whether within or without the state. Assessments on peanuts put under loan to the Commodity Credit Corporation or purchased by the Commodity Credit Corporation and delivered to it shall be payable when such peanuts are placed under loan or are purchased. The Commodity Credit Corporation may require deduction and payment of the assessment from the loan proceeds or from the purchase price on behalf of the producer. Assessments on peanuts put under loan to the Commodity Credit Corporation and redeemed by the producer before the takeover date, if already paid by having been deducted from the loan proceeds, shall not be deducted by each handler from the amount paid the producer at the first point of sale as provided in this section; otherwise, the assessment shall be deducted.

(b) Any peanut producer may request and receive a refund of the amount of assessment deducted from the sale of his peanuts if he makes a written application with the department within sixty (60) days from the date of sale, supported by bona fide copies of sales slips signed by the purchaser. The application forms shall be prepared by the department and shall be available at the first point of sale. All such applications shall be processed and refunds paid by the department within sixty (60) days after the funds have been received by the department. Each marketing agency shall be furnished a poster to be displayed in a prominent place, stating that refunds are available and that the forms, including self-addressed envelopes, are available at its office. If a producer pledges peanuts grown by that producer as collateral for a loan issued by the Commodity Credit Corporation and if that producer forfeits the peanuts in lieu of loan repayment, the Commodity Credit Corporation shall at the time of the loan settlement, collect the assessment from the producer.

(2) The assessment imposed and levied by this section shall be payable to and collected by the department from the purchaser of the peanuts at the first point of sale or from the Commodity Credit Corporation as provided in subsection (1) of this section. The proceeds of the assessment collected by the department shall be deposited monthly with the State Treasurer in a special fund to be established as the "Mississippi Peanut Promotion Fund," and promptly remitted to a foundation under the terms and conditions as the board deems necessary to ensure that the assessments are used properly in carrying out the purposes of this chapter.

(3) The department shall submit to the board a budget detailing and justifying the administrative costs of the department in administering the provisions of this chapter. The budget must be approved by the board by April 1 of each year. The department shall pay over to the Mississippi Peanut Promotion Fund the funds collected, less three and one-half percent (3-½%) of the gross amount collected. The amount withheld by the department must be approved by the board by July 1 of each year.

(4) Each purchaser or the Commodity Credit Corporation shall keep a complete and accurate record of all peanuts handled by him and shall furnish each producer with a signed sales slip showing the number of bushels purchased from him and the amount deducted by him for the Mississippi Peanut Promotion Fund. The records shall be in the form and contain any other information as the department shall by rule or regulation prescribe. The records shall be preserved by the purchaser for a period of two (2) years and shall be offered for inspection at any time upon oral or written demand by the department or any duly authorized agent or representative thereof. Every purchaser or the Commodity Credit Corporation, at such time or times as the department may require, shall submit reports or other documentary information deemed necessary for the efficient and equitable collection of the assessment imposed in this chapter. The department shall have the power to cause any duly authorized agent or representative to enter upon the premises of any purchaser of peanuts and examine or cause to be examined by the agent only books, papers and records which deal in any way with the payment of the assessment or enforcement of the provisions of this chapter.

HISTORY: Laws, 2007, ch. 321, § 3; brought forward without change, Laws, 2009, ch. 392, § 3, eff from and after July 1, 2009.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the next-to-last sentence of (1)(a), deleting the letter "s" from the end of the word "purchases" so that "from the loan proceeds or from the purchases price" will read "from the loan proceeds or from the purchase price." The Joint Committee ratified the correction at its August 5, 2008, meeting.

§ 69-48-7. Department authorized to collect assessment created by Peanut Promotion, Research and Consumer Information Act.

The department is authorized to collect the assessment created by the Peanut Promotion, Research and Consumer Information Act administered by the U.S. Department of Agriculture on behalf of the board.

HISTORY: Laws, 2007, ch. 321, § 4; brought forward without change, Laws, 2009, ch. 392, § 4, eff from and after July 1, 2009.

Federal Aspects— Assessments created by the Peanut Promotion, Research and Information Order, see 7 CFR § 1216.51.

§ 69-48-9. Penalties; exemption.

(1) Any purchaser who fails to file a report or to pay any assessment within the time required by the department shall forfeit to the department a penalty of five percent (5%) of the assessment determined to be due, plus one percent (1%) of the amount for each month of delay or fraction thereof after the first month after the report was required to be filed or the assessment became due. The penalty shall be paid to the department and shall be disposed of by it in the same manner as funds derived from the payment of the assessment imposed herein.

(2) The department shall collect the penalties levied herein, together with the delinquent assessment, by any or all of the following methods:

(a) By voluntary payment by the person liable.

(b) By legal proceedings instituted in a court of competent jurisdiction.

(3) Any person required to pay the assessment provided for in this chapter who fails to remit same or who refuses to allow full inspection of the premises, or the books, records or other documents relating to the liability of the person for the assessment herein imposed, or who shall hinder or in any way delay or prevent the inspection, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding One Thousand Dollars ($1,000.00) or by imprisonment not to exceed one (1) year, or both.

(4) The provisions of this chapter shall not apply to any person who purchases two thousand (2,000) pounds (one (1) ton) gross weight, or less in any calendar year, provided he is not regularly engaged in the purchase of peanuts.

HISTORY: Laws, 2007, ch. 321, § 5; brought forward without change, Laws, 2009, ch. 392, § 5, eff from and after July 1, 2009.

§ 69-48-11. Expenditure of funds; reporting requirement; penalty for failure to report.

(1) The board shall plan and conduct a program of research, education and advertising designed to promote the peanut industry in Mississippi. The board is authorized to use the funds derived from the assessment imposed herein for these purposes, including basic administration expenses of the plan. Use of these funds may be applied, as prescribed in this section, within or without the State of Mississippi, including regional, national and international research and promotional applications.

(2)(a) The Mississippi Legislature finds and declares that the factors which affect the ability of Mississippi peanut farmers to market their crop are established by national and international forces in the world market. The Legislature further finds and declares that the expenditure of funds by the board for the purpose of influencing the development and implementation of national and international policy affecting the marketing, research and advertising of peanuts produced by Mississippi farmers is the expenditure of funds for a public purpose.

(b) The board may expend a portion of the funds received and administered by the board for the purpose of influencing the development and implementation of national and international policy affecting peanuts produced by Mississippi farmers.

(c) The amount of funds expended by the board in each fiscal year for the purposes authorized in this subsection shall not exceed fifteen percent (15%) of the budget of the board for that fiscal year.

(d) The board shall not expend any funds for the purpose of influencing any political activity.

(3) A report of all income and expenditures shall be made annually on December 31, with four (4) copies of the report to be filed and presented during the regular sessions of the Mississippi Legislature with each of the following: the Chairman of the House of Representatives Agriculture Committee, the Chairman of the Senate Agriculture Committee, the Mississippi Department of Agriculture and Commerce and the State Auditor.

(4) If the board fails to make an annual report in violation of the provisions of subsection (3) of this section, the board shall be subject to a fine of not more than Five Hundred Dollars ($500.00).

HISTORY: Laws, 2007, ch. 321, § 6; Laws, 2009, ch. 392, § 6, eff from and after July 1, 2009.

§ 69-48-13. State Tax Commission to assist department in collecting assessments.

The State Tax Commission shall provide any information necessary to assist the department in collecting the assessments provided for in this chapter.

HISTORY: Laws, 2007, ch. 321, § 7; brought forward without change, Laws, 2009, ch. 392, § 7, eff from and after July 1, 2009.

Editor's Notes — Section 27-3-4 provides that the terms " 'Mississippi State Tax Commission,' 'State Tax Commission,' ' Tax Commission' and 'commission' " appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the "Department of Revenue."

Cross References — Duties and powers of State Tax Commission, see § 27-3-31.

§ 69-48-14. Commissioner authorized to audit Peanut Promotion Board; information to be included in audit; injunction for violations of chapter.

(1) The commissioner may conduct an audit of the board to verify compliance with any rules and regulations promulgated for the efficient enforcement of this chapter.

(2) Under this section, the audited board shall provide information to the commissioner that verifies the amounts received and expended from the fees assessed and collected by the department and remitted to the board. Records maintained in the course of the normal conduct of business by the board may serve as verification.

(3) The commissioner may apply for and the court may grant a temporary or permanent injunction on disbursements made to the board from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under this chapter, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

HISTORY: Laws, 2009, ch. 392, § 8, eff from and after July 1, 2009.

§ 69-48-15. Provisions to be controlling.

Notwithstanding the provisions of any laws or parts of laws in conflict herewith, the provisions of this chapter shall be controlling to the extent of the conflict.

HISTORY: Laws, 2007, ch. 321, § 8; brought forward without change, Laws, 2009, ch. 392, § 9, eff from and after July 1, 2009.

CHAPTER 49.

FIELD CROP PRODUCTS

Sec.
69-49-1. Liability for destruction of field crop products; factors in awarding damages; limitation of damages; definition of "field crop."

§ 69-49-1. Liability for destruction of field crop products; factors in awarding damages; limitation of damages; definition of "field crop."

(1) Any person or entity who willfully and knowingly damages or destroys any field crop product that is grown for personal or commercial purposes, or for testing or research purposes in the context of a product development program in conjunction or coordination with a private research facility or a university or any federal, state or local government agency, shall be liable for twice the value of the crop damaged or destroyed.

(2) In awarding damages under this section, the courts shall consider the market value of the crop prior to damage or destruction and production, research, testing, replacement and crop development costs directly related to the crop that has been damaged or destroyed as part of the value of the crop.

(3) Damages available under this section shall be limited to twice the market value of the crop prior to damage or destruction plus twice the actual damages involving production, research, testing, replacement and crop development costs directly related to the crop that has been damaged or destroyed.

(4) For the purposes of this section, "field crop" means any product grown, developed or raised for purposes, including, but not limited to, human or animal consumption, research, industrial, commercial or pharmacological purposes.

HISTORY: Laws, 2001, ch. 355, § 1, eff from and after July 1, 2001.

CHAPTER 51.

ETHANOL, ANHYDROUS ALCOHOL AND WET ALCOHOL

Sec.
69-51-1. Goal to encourage ethanol production plants.
69-51-3. Definitions.
69-51-5. Cash payments to producers of ethanol, anhydrous alcohol, bio-diesel and wet alcohol.

§ 69-51-1. Goal to encourage ethanol production plants.

It is the goal of this state to encourage ethanol production plants in the state to utilize Mississippi-produced corn and other agriculture and forest resource commodities.

HISTORY: Laws, 2002, ch. 603, § 1, eff from and after June 30, 2002.

Cross References — Ethanol defined as a gasoline and petroleum product, see § 75-55-5.

§ 69-51-3. Definitions.

For the purposes of this chapter, the following terms shall have the meanings ascribed to them herein unless the context clearly indicates otherwise:

(a) "Anhydrous alcohol" means fermentation ethyl alcohol derived from biomass, but that does not meet ASTM specifications or is not denatured and is shipped in bond for further processing.

(b) "Biomass" means any organic matter which is available on a renewable basis including agricultural crops and agricultural wastes and residues, wood and wood wastes and residues, and animal wastes.

(c) "Ethanol" means fermentation ethyl alcohol which is produced from biomass and, that:

(i) Meets all of the specifications in ASTM specification D 4806-88; and

(ii) Is denatured as specified in Code of Federal Regulations, Title 27, parts 20 and 21.

(d) "Ethanol plant" means a plant at which ethanol, anhydrous alcohol or wet alcohol is produced.

(e) "Wet alcohol" means agriculturally derived fermentation ethyl alcohol having a purity of at least fifty percent (50%) but less than ninety-nine percent (99%).

HISTORY: Laws, 2002, ch. 603, § 2, eff from and after June 30, 2002.

Cross References — Ethanol defined as a gasoline and petroleum product, see § 75-55-5.

§ 69-51-5. Cash payments to producers of ethanol, anhydrous alcohol, bio-diesel and wet alcohol.

(1) The Commissioner of Agriculture and Commerce is authorized to make cash payments to producers of ethanol, anhydrous alcohol, bio-diesel and wet alcohol located in the state. These payments shall apply only to ethanol, bio-diesel, anhydrous alcohol and wet alcohol fermented and produced at plants in the state. For purposes of this section, an entity that holds a controlling interest in more than one (1) ethanol or bio-diesel plant is considered a single producer. The amount of the payment for each producer's annual production is:

(a) Except as provided in subsection (2) of this section, for each gallon of ethanol, bio-diesel or anhydrous alcohol produced in Mississippi in accordance with subsection (13) of this section on or before June 30, 2005, or for ten (10) years after the start of production, whichever is later, Twenty Cents (20¢) per gallon; and

(b) For each gallon of wet alcohol produced in Mississippi in accordance with subsection (13) of this section on or before June 30, 2005, or for ten (10) years after the start of production, whichever is later, a payment in cents per gallon calculated by the formula "alcohol purity in percent divided by five (5)," and rounded to the nearest cent per gallon, but not less than Eleven Cents (11¢) per gallon.

The producer payments for anhydrous alcohol, bio-diesel and wet alcohol under this section may be paid to the original producer.

No payments shall be made for production that occurs after June 30, 2015.

(2) If the level of production at an ethanol or bio-diesel plant increases due to an increase in the production capacity of the plant, the payment under subsection (1)(a) of this section applies to the additional increment of production until ten (10) years after the increased production began. Once a plant's production capacity reaches thirty million (30,000,000) gallons per year, no additional increment shall qualify for the payment.

(3) The commissioner is authorized to make payments to producers of ethanol, bio-diesel or wet alcohol in the amount of One and One-half Cents (1-½¢) for each kilowatt hour of electricity generated using biomass in a cogeneration facility at an ethanol plant located in the state. Payments under this subsection shall be made only for electricity generated at cogeneration facilities that begin operation by June 30, 2005. The payments apply to electricity generated on or before the date ten (10) years after the producer first qualifies for payment under this subsection. Total payments under this subsection in any fiscal year may not exceed Seven Hundred Fifty Thousand Dollars ($750,000.00). For the purposes of this subsection:

"Cogeneration" means the combined generation of:

(a) Electrical or mechanical power; and

(b) Steam or forms of useful energy, such as heat, that are used for industrial, commercial, heating or cooling purposes.

(4) Payments under subsections (1) and (2) of this section to all producers may not exceed Thirty-seven Million Dollars ($37,000,000.00) in a fiscal year.

Total payments under subsections (1) and (2) of this section to a producer in a fiscal year may not exceed Six Million Dollars ($6,000,000.00).

(5) By the last day of October, January, April and July, each producer shall file a claim for payment for ethanol, bio-diesel, anhydrous alcohol and wet alcohol production during the preceding three (3) calendar months. A producer with more than one (1) plant shall file a separate claim for each plant. A producer that files a claim under this subsection shall include a statement of the producer's total ethanol, bio-diesel, anhydrous alcohol and wet alcohol production in Mississippi during the quarter covered by the claim, including anhydrous alcohol and wet alcohol produced or received from an outside source. A producer shall file a separate claim for any amount claimed under subsection (3) of this section. For each claim and statement of total ethanol, bio-diesel, anhydrous alcohol and wet alcohol production filed under this section, the volume of ethanol, bio-diesel, anhydrous alcohol and wet alcohol production or amounts of electricity generated using biomass must be examined by an independent certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants.

(6) Payments shall be made November 15, February 15, May 15 and August 15. A separate payment shall be made for each claim filed. Except as provided in subsection (9) of this section, the total quarterly payment to a producer under this subsection, excluding amounts paid under subsection (3) of this section, may not exceed One Million Five Hundred Thousand Dollars ($1,500,000.00).

(7) If the total amount for which all producers are eligible in a quarter under subsection (3) of this section exceeds the amount available for payments, the commissioner shall make payments pro rata.

(8) After July 1, 2002, new production capacity is eligible for payment under this section only if the commissioner received:

(a) An application for approval of the new production capacity;

(b) An appropriate letter of long-term financial commitment for construction of the new production capacity; and

(c) Copies of all necessary permit applications for construction of the new production capacity. The commissioner may approve new production capacity based on the order in which the applications are received.

(9) Notwithstanding the quarterly payment limits of subsections (4) and (6), the commissioner shall make an additional payment in the eighth quarter of each fiscal biennium to ethanol or bio-diesel producers for Twenty Cents (20¢) per gallon of production in the eighth quarter of the biennium that is greater than seven million five hundred thousand (7,500,000) gallons.

(10) The commissioner shall adopt rules to implement this chapter and objective criteria by rule for who is eligible or not eligible for payment in compliance with this chapter.

(11) A plant in production or under construction by June 30, 2005, shall continue to receive uninterrupted payments under this section of at least Twenty Cents (20¢) per gallon of ethanol or bio-diesel produced until July 1, 2015.

(12) Promotional or educational efforts related to ethanol that are financed wholly or partially with state funds and that promote or identify a particular crop or commodity used to produce ethanol must also include a description of the other potential sources of ethanol listed in Section 69-51-3.

(13) It is the intent of this legislation that corn, biomass and resource commodities shall be furnished totally by Mississippi farmers insofar as the supply is available.

HISTORY: Laws, 2002, ch. 603, § 3; Laws, 2003, ch. 528, § 1; Laws, 2005, ch. 364, § 1, eff from and after July 1, 2005.

CHAPTER 53.

AGRITOURISM

Sec.
69-53-1. Definitions.
69-53-3. Agritourism activity liability.
69-53-5. Warning notice.
69-53-7. Registration of agritourism professionals.
69-53-9. Repealed.

§ 69-53-1. Definitions.

As used in this chapter, the following terms shall have the meanings ascribed, unless the context requires otherwise:

(a) "Agritourism" means the travel or visit by the general public to, or the practice of inviting or allowing the general public to travel to or visit a working farm, ranch, or other commercial agricultural, aquacultural, horticultural, or forestry operation for the purpose of enjoyment, education, or participation in the activities of the farm, ranch, or other agricultural, aquacultural, horticultural, or forestry operation.

(b) "Agritourism activity" means any activity which allows members of the general public, for recreational, entertainment or educational purposes, to view or enjoy rural activities, including, but not limited to, farming activities, ranching activities or historic or cultural or natural attractions.

(c) "Agritourism professional" means any person, partnership, corporation, or the employees or authorized agents, who offer or conduct one or more agritourism activities, whether or not for compensation.

(d) "Inherent risks of agritourism activity" means those dangers or conditions that are an integral part of an agritourism activity, including, but not limited to, certain hazards involving surface and subsurface conditions, natural conditions of land, vegetation and waters, the behavior of wild or domestic animals, and ordinary dangers of structures or equipment ordinarily used in farming, ranching, or other commercial agricultural, aquacultural, horticultural or forestry operation. Inherent risks of agritourism activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity.

(e) "Participant" means any person, other than the agritourism professional, who engages in an agritourism activity.

HISTORY: Laws, 2012, ch. 418, § 1, eff from and after passage (approved Apr. 18, 2012).

§ 69-53-3. Agritourism activity liability.

(1) Except as provided in subsection (2) of this section, an agritourism professional is not liable for injury to or death of a participant resulting from

the inherent risks of agritourism activities if the warning contained in Section 69-53-5 is posted as required and, except as provided in subsection (2) of this section, no participant or participant's representative can maintain an action against or recover from an agritourism professional for injury, loss, damage or death of the participant resulting exclusively from any of the inherent risks of agritourism activities. In any action for damages against an agritourism professional for agritourism activity, the agritourism professional may plead the provisions of this section as an affirmative defense.

(2) Nothing in subsection (1) of this section prevents or limits the liability of an agritourism professional if the agritourism professional does any one or more of the following:

(a) Commits or omits an act if the act or omission constitutes willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage or death to the participant.

(b) Has actual knowledge or reasonably should have known of a dangerous condition on the land, facilities or equipment used in the activity or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage or death to the participant.

(c) Intentionally injures the participant.

(3) Nothing in subsection (1) of this section:

(a) Prevents or limits the liability of an agritourism professional under products liability laws.

(b) Shall be construed so as to negate that assumption of risk is an affirmative defense.

(4) Any limitation on legal liability afforded by this section to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law.

HISTORY: Laws, 2012, ch. 418, § 2, eff from and after passage (approved Apr. 18, 2012).

§ 69-53-5. Warning notice.

(1) Every agritourism professional must post and maintain signs that contain the warning notice specified in this section. The sign must be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice must consist of a sign in black letters, with each letter to be a minimum of one (1) inch in height. Every written contract entered into by an agritourism professional for the providing of professional services, instruction or the rental of equipment to a participant, whether or not the contract involves agritourism activities on or off the location or at the site of the agritourism activity, must contain in clearly readable print the warning notice specified in subsection (2) of this section.

(2) The signs and contracts must contain the following notice of warning:

"WARNING

Under Mississippi law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if the injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment and animals, as well as the potential for you or another participant to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity."

(3) Failure to comply with the requirements concerning warning signs and notices provided in this section will prevent an agritourism professional from invoking the privileges of immunity provided by this chapter.

HISTORY: Laws, 2012, ch. 418, § 3, eff from and after passage (approved Apr. 18, 2012).

§ 69-53-7. Registration of agritourism professionals.

(1) An agritourism professional must register with the Mississippi Department of Agriculture and Commerce on an annual basis. The registration shall contain information describing the agritourism activity that the agritourism professional conducts or intends to conduct and the location where the person conducts or intends to conduct such agritourism activity. Additionally, the agritourism professional must pay an annual fee in the amount of Fifty Dollars ($50.00) to the Department at the time of registration. There is established in the State Treasury a special fund for the Mississippi Department of Agriculture and Commerce for the monies collected under this section. Unexpended monies remaining in the fund at the end of the fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited into the fund.

(2) The Department shall maintain a list of all registered agritourism professionals, the registered agritourism activities conducted by each professional, and the registered agritourism location where the professional conducts such activities. Such list shall be made available to the public. The Department, in conjunction with other agritourism and rural economic efforts, shall promote and publicize registered agritourism professionals, activities and locations to advance agritourism in the state. The Department assumes no legal liability by registering agritourism professionals, but merely serves to promote agritourism in the state.

(3) The Department shall adopt guidelines to carry out the intent of this chapter.

HISTORY: Laws, 2012, ch. 418, § 4, eff from and after passage (approved Apr. 18, 2012).

§ 69-53-9. Repealed.

Repealed by Laws, 2018, ch. 315, § 1, eff from and after passage (approved March 5, 2018).

§ 69-53-9. [Laws, 2012, ch. 418, § 5; Laws, 2014, ch. 355, § 1, eff from and after passage (approved Mar. 17, 2014).]

Editor's Notes — Former § 69-53-9 was the repealer for §§ 69-53-1 through 69-53-7, effective July 1, 2018.

CHAPTER 55.

MISSISSIPPI AGRICULTURE STABILIZATION ACT.

Sec.
69-55-1. Short title.
69-55-3. Establishment of the Poultry Farmer Stabilization Grant Program, the Mississippi Supplemental CFAP Grant Program, and the Sweet Potato Farm Sustainment Grant Program; purpose.
69-55-5. Department of Agriculture to implement regulations and develop procedures for administration and eligibility requirements of programs; administrative expenses; contract with entity to administer programs.
69-55-7. Creation of the Poultry Farmer Stabilization Grant Program Fund, the Mississippi Supplemental CFAP Grant Program Fund, and the Sweet Potato Farm Sustainment Grant Program Fund; use of funds; unexpended monies.
69-55-9. Report on utilization of program.

§ 69-55-1. Short title.

This chapter shall be known and may be cited as the “Mississippi Agriculture Stabilization Act.”

HISTORY: Laws, 2020, ch. 498, § 2, eff from and after passage (became law without the Governor’s signature on October 9, 2020).

Editor’s Notes — Laws of 2020, ch. 498, § 7, effective October 9, 2020, provides: “SECTION 7. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect.”

§ 69-55-3. Establishment of the Poultry Farmer Stabilization Grant Program, the Mississippi Supplemental CFAP Grant Program, and the Sweet Potato Farm Sustainment Grant Program; purpose.

In response to the COVID-19 pandemic, the Mississippi Department of Agriculture and Commerce shall establish and administer the following grant programs:

(a) The Poultry Farmer Stabilization Grant Program for the purpose of assisting Mississippi poultry farmers who have experienced a loss of at least one (1) full flock of production due to the COVID-19 pandemic;

(b) The Mississippi Supplemental CFAP Grant Program for the purpose of assisting commodity producers who qualified for the USDA’s Coronavirus Food Assistance Program (CFAP); and

(c) The Sweet Potato Farm Sustainment Grant Program for the purpose of providing grants to sweet potato farmers to cover expenses due to the COVID-19 pandemic.

HISTORY: Laws, 2020, ch. 498, § 3, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 498, § 7, effective October 9, 2020, provides: "SECTION 7. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 69-55-5. Department of Agriculture to implement regulations and develop procedures for administration and eligibility requirements of programs; administrative expenses; contract with entity to administer programs.

(1) The Department of Agriculture and Commerce shall implement regulations and develop procedures to govern the administration and eligibility requirements of the programs established in this chapter.

(2) The department may:

(a) Retain up to three percent (3%) of the funds appropriated to the programs established in this chapter to pay reasonable expenses incurred in the administration of the programs.

(b) Contract with an entity to administer the programs established in this chapter. When contracting with the entity to administer the programs, the department shall be exempt from Section 27-104-7(2)(g) requiring approval by the Public Procurement Review Board.

HISTORY: Laws, 2020, ch. 498, § 4, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 498, § 7, effective October 9, 2020, provides: "SECTION 7. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 69-55-7. Creation of the Poultry Farmer Stabilization Grant Program Fund, the Mississippi Supplemental CFAP Grant Program Fund, and the Sweet Potato Farm Sustainment Grant Program Fund; use of funds; unexpended monies.

(1)(a) There is created a special fund in the State Treasury, to be known as the "Poultry Farmer Stabilization Grant Program Fund," from which the grants authorized under the Poultry Farmer Stabilization Grant Program shall be disbursed by the Department of Agriculture and Commerce;

(b) There is created a special fund in the State Treasury, to be known as the "Mississippi Supplemental CFAP Grant Program Fund," from which the grants authorized under the Mississippi Supplemental CFAP Grant Program shall be disbursed by the Department of Agriculture and Commerce; and

(c) There is created a special fund in the State Treasury, to be known as the "Sweet Potato Farm Sustainment Grant Program Fund," from which the grants authorized under the Sweet Potato Farm Sustainment Grant Program shall be disbursed by the Department of Agriculture and Commerce.

(2)(a) All monies shall be disbursed from the funds created in subsection (1) of this section in compliance with the guidelines, guidance, rules, regulations or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act. However, unexpended amounts of any monies unrelated to the Coronavirus Relief Fund, whether appropriated by the Legislature or donated by any public or private entity, remaining in the funds at the end of a fiscal year shall not lapse into the Budget Contingency Fund or the State General Fund, and any investment earnings or interest earned on amounts in the grant program funds shall be deposited to the credit of the respective grant program fund; and

(b) If on December 15, 2020, there are unexpended Coronavirus Relief Fund monies remaining in any fund created in this section, those funds shall be transferred by the State Fiscal Officer into the Unemployment Compensation Fund no later than December 30, 2020.

(3) The use of funds allocated under these programs shall be subject to audit by the United States Department of the Treasury's Office of Inspector General and the Mississippi Office of the State Auditor. Each person receiving funds under these programs found to be fully or partially noncompliant with the requirements in this chapter shall return to the state all or a portion of the funds received.

HISTORY: Laws, 2020, ch. 498, § 5, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Joint Legislative Committee Note— Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (3) by substituting "funds allocated under these programs" for "funds allocated under this program." The Joint Committee ratified the correction at its August 20, 2021, meeting.

Editor's Notes — Laws of 2020, ch. 498, § 1, effective October 9, 2020, provides:

"SECTION 1. (1) Upon the effective date of this act, the State Fiscal Officer shall transfer to the 'Poultry Farmer Stabilization Grant Program Fund' out of the Budget Contingency Fund .... $3,000,000.00.

"(2) Upon the effective date of this act, the State Fiscal Officer shall transfer to the 'Mississippi Supplemental CFAP Grant Program Fund' out of the Budget Contingency Fund .... $9,500,000.00.

"(3) Upon the effective date of this act, the State Fiscal Officer shall transfer to the 'Sweet Potato Farm Sustainment Grant Program Fund' out of the Budget Contingency Fund .... $500,000.00."

Laws of 2020, ch. 498, § 7, effective October 9, 2020, provides:

"SECTION 7. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 69-55-9. Report on utilization of program.

The Department of Agriculture and Commerce shall report on the utilization of the programs to the Chair of the Agriculture Committees of the Senate and the House of Representatives, the Lieutenant Governor, the Speaker of the House and the Governor by December 15, 2020. At a minimum, the report shall contain:

(a) The name of each grant participant; and
(b) The total amount of payment received by each participant.

HISTORY: Laws, 2020, ch. 498, § 6, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 498, § 7, effective October 9, 2020, provides:
"SECTION 7. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

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TITLE 71.
LABOR AND INDUSTRY

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Chapter 3. Workers' Compensation. 71-3-1
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CHAPTER 1.
EMPLOYER AND EMPLOYEE

Sec.
71-1-1. Occupational health and safety program.
71-1-3 through 71-1-9. Repealed.
71-1-11. Repealed.
71-1-13 and 71-1-15. Repealed.
71-1-17. Children under fourteen not to work in mills or factories.
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71-1-21. Regulating hours of labor.
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71-1-47. Denial or abridgment of work.
71-1-49. Certain persons prohibited from labor management functions.
71-1-51. Repealed.
71-1-53. Penalty for violation of this chapter.

Sec.	
71-1-55.	Discrimination against breast-feeding mother who uses lawful break time to express milk prohibited.

§ 71-1-1. Occupational health and safety program.

The state board of health is authorized to establish an occupational health and safety program and is empowered:

(a) To employ such qualified personnel as staff to carry out the duties and responsibilities set forth herein;

(b) To develop and make available upon request to all employers of the state, including public employers, information, consultation and assistance related to safety and health laws, regulations, measures and standards; to participate and assist with training and educational programs, directed toward employee safety and disease prevention;

(c) To employ such personnel and procure such equipment as necessary to provide on-site consultive services related to assistance, information, education or training of employers and employees toward compliance with safety and health standards and toward the establishment of safety and health programs to prevent work-connected disabilities;

(d) To collect, compile and report statistics related to work-connected disabilities in Mississippi; such statistical work shall be performed in cooperation with other statistic-gathering agencies with the federal and state governments. Such statistical reports as may be available shall be made known to employers and employees.

(e) To receive such federal or state grants and appropriations as available to further the education, training and assistance to the employers and employees of Mississippi in preventing work-connected disabilities.

(f) Nothing in this section shall be construed as authorizing the state board of health to administer or enforce in any way the Federal Occupational Safety and Health Act, known as OSHA.

HISTORY: Codes, Hemingway's 1917, § 4499; 1930, § 4637; 1942, § 6977; Laws, 1914, ch. 163; Laws, 1974, ch. 515, § 1, eff from and after July 1, 1974.

Cross References — Oath and bond of state officers, see §§ 25-1-9 et seq.

The power of the state board of health to establish programs concerning occupational safety and health, see § 41-3-15.

Federal Aspects— The Federal Occupational Safety and Health Act (OSHA) appears generally as 29 USCS §§ 651 et seq.

JUDICIAL DECISIONS

1. In general.

In a products liability/negligence suit, the court reserved judgment on whether expert testimony as to whether Occupational Safety and Health Administration standards had been violated should be admitted under Fed. R. Evid. 702 with regard to whether a ladder that provided access to an industrial machine was defectively designed; under Miss. Code Ann. § 71-1-1(f), OSHA regulations did not have compulsory force on the issue of defective design. Walker v. George Koch Sons, Inc., 2009 U.S. Dist. LEXIS 25860 (S.D. Miss. Mar. 27, 2009).

Evidence of regulations promulgated under Occupational Safety and Health Act (OSHA) is not admissible to show negligence. Sumrall v. Mississippi Power Co., 693 So. 2d 359, 1997 Miss. LEXIS 82 (Miss. 1997).

Trial court did not abuse its discretion in refusing to allow evidence of Occupational Safety and Health Act (OSHA) violations to impeach witness after trial court had in general refused to allow evidence of OSHA regulations, in negligence action brought by employee of contractor retained by electric utility to install new fly ash pond discharge structure for coal-burning facility against utility, arising from injuries allegedly suffered while working in trench; there was little doubt that true intent of counsel for employee was not to impeach witness' credibility but, rather, to present evidence of OSHA violations which he could not introduce otherwise. Sumrall v. Mississippi Power Co., 693 So. 2d 359, 1997 Miss. LEXIS 82 (Miss. 1997).

The state board of health cannot arbitrarily remove the state factory inspector, but can do so only for good cause following charges, notice, and an opportunity to be heard. State ex rel. Attorney Gen. v. McDowell, 111 Miss. 596, 71 So. 867, 1916 Miss. LEXIS 344 (Miss. 1916).

The term of office of the state factory inspector is four years. State ex rel. Attorney Gen. v. McDowell, 111 Miss. 596, 71 So. 867, 1916 Miss. LEXIS 344 (Miss. 1916).

RESEARCH REFERENCES

ALR.

Propriety of state or local government health officer's warrantless search-post–Camara cases. 53 A.L.R.4th 1168.

Employer's liability to employee for failure to provide work environment free from tobacco smoke. 63 A.L.R.4th 1021.

Liability for retaliation against at-will employee for public complaints or efforts relating to health or safety. 75 A.L.R.4th 13.

What constitutes "repeated" or "willful" violation for purposes of state occupational safety and health acts. 17 A.L.R.6th 715.

Technological Feasibility as Factor Affecting Validity of, or Obligation of Compliance with, Standards Established Under Occupational Safety and Health Act (29 U.S.C. § 651 et seq.). 72 A.L.R. Fed. 2d 461.

When is "greater hazard" defense available to employer cited for violation of Occupational Safety and Health Act (29 USCS §§ 651 et seq). 47 A.L.R. Fed. 348.

Validity, construction, and application of OSHA general industry standards for scaffolding (29 CFR § 1910.28). 47 A.L.R. Fed. 809.

Construction and application of provision of 29 USCS § 658(a) that OSHA citation "shall describe with particularity the nature of the violation." 48 A.L.R. Fed. 466.

What is "recognized hazard" within meaning of general duty clause of Occupational Safety and Health Act (29 USCS § 654(a)(1)). 50 A.L.R. Fed. 741.

Propriety of conducting OSHA plant discovery inspection by nonfederally employed expert. 50 A.L.R. Fed. 906.

What are "extraordinary circumstances" of 29 USCS § 660(a) which permit judicial review of matters not raised before Occupational Safety and Health Review Commission. 52 A.L.R. Fed. 867.

Inspectors' authority to conduct physical examination of employees, or to have access to employees' medical and personnel records pursuant to § 8 of the Occupational Safety and Health Act of 1970 (29 USCS § 657(a), (b)). 56 A.L.R. Fed. 262.

Employee misconduct as defense to citation, issued pursuant to provisions of Occupational Safety and Health Act (29 USCS §§ 651 et seq.), arising out of alleged violation of standards resulting in death or personal injury of employee. 59 A.L.R. Fed. 395.

Propriety of challenging validity of OSHA standard at time of judicial review of enforcement proceeding under § 11(a) of Occupational Safety and Health Act (29 USCS § 660(a)). 61 A.L.R. Fed. 422.

Economic feasibility as factor affecting validity of, or obligation of compliance with, standards established under Occupational Safety and Health Act (29 USCS §§ 651 et seq). 68 A.L.R. Fed. 732.

Pre-emptive effect of Occupational Safety and Health Act of 1970 (29 USCS §§ 651-678) and standards issued thereunder. 88 A.L.R. Fed. 833.

What constitutes "willful" violation for purposes of §§ 17(a) or (e) of Occupational Safety and Health Act of 1970 (29 U.S.C.S. § 666(a) or § 666(e)). 161 A.L.R. Fed. 561.

Am. Jur.

61 Am. Jur. 2d, Plant and Job Safety – OSHA and State Laws §§ 54-57, 59-62, 64, 65.

17 Am. Jur. Pl & Pr Forms (Rev), Master and Servant, Forms 211 et seq. (liability of employer for injuries to employee).

CJS.

51 C.J.S., Labor Relations § 3.

Practice References.

John M. Hament and Roger S. Kaplan, Occupational Safety and Health Act (OSHA) (Matthew Bender).

Jeffrey L. Hirsch, Occupational Safety and Health Handbook: An Employer 's Guide to OSHA Laws, Regulations, and Practices (LexisNexis).

Labor and Employment Law (Matthew Bender).

§§ 71-1-3 through 71-1-9. Repealed.

Repealed by Laws, 1974, ch. 515, § 2, eff from and after July 1, 1974.

§ 71-1-3. [Codes, Hemingway's 1917, § 4501; 1930, § 4638; 1942, § 6978; Laws, 1914, ch. 163]

§ 71-1-5. [Codes, Hemingway's 1917, § 4502; 1930, § 4639; 1942, § 6979; Laws, 1914, ch. 163]

§ 71-1-7. [Codes, Hemingway's 1917, § 4503; 1930, § 4640; 1942, § 6980; Law, 1914, ch. 163]

§ 71-1-9. [Codes, Hemingway's 1917, § 4504; 1930, § 4641; 1942, § 6981; Law, 1914, ch. 163]

Editor's Notes — Former § 71-1-3 concerned the duties of a factory inspector.

Former § 71-1-5 related to the annual reports of a factory inspector.

Former § 71-1-7 provided for penalties for failure to aid to the state factory inspector.

Former § 71-1-9 related to the duties of the state factory inspector to register certain factories.

§ 71-1-11. Repealed.

Repealed by Laws, 1972, ch. 374, § 1, eff from and after July 1, 1972.

§ 71-1-11. [Codes, Hemingway's 1917, § 4505; 1930, § 4642; 1942, § 6982; Laws, 1914, ch. 7; Laws, 1926, ch. 189; Laws, 1934, ch. 292]

Editor's Notes — Former § 71-1-11 related to fees for registering establishments with the state factory inspector.

§§ 71-1-13 and 71-1-15. Repealed.

Repealed by Laws, 1974, ch. 515, § 2, eff from and after July 1, 1974.

§ 71-1-13. [Codes, Hemingway's 1917, § 4506; 1930, § 4643; 1942, § 6983; Laws, 1916, ch. 95; Laws, 1926, ch. 189]

§ 71-1-15. [Codes, Hemingway's 1917, § 4507; 1930, § 4644; 1942, § 6984; Laws, 1916, ch. 95; Laws, 1926, ch. 189]

Editor's Notes — Former § 71-1-13 concerned the duties of the state factory inspector to furnish forms for reports.

Former § 71-1-15 provided for penalties for an establishment's failure to file reports.

§ 71-1-17. Children under fourteen not to work in mills or factories.

No boy or girl under the age of fourteen (14) years shall be employed or permitted to work in any mill, cannery, workshop, factory, or manufacturing establishment within this state.

HISTORY: Codes, Hemingway's 1917, § 4515; 1930, § 4645; 1942, § 6985; Laws, 1914, ch. 164; Laws, 1924, ch. 314.

Cross References — Crime of enticing children for employment, see § 97-5-7.

JUDICIAL DECISIONS

1. In general.

In a claim for double workman's compensation benefits arising out of the death of a 16-year old boy who was employed by a corporation which cultivated the soil to produce grain which it used to feed cattle which it later sold, the corporation was not a manufacturing establishment within the meaning of § 71-1-17 where the harvested grain was not converted from a raw product into a substantially different substance or material; since the decedent's work activity of entering a grain silo to level shelled corn was incidental to the corporation's farming activities, the decedent's employment was agricultural in nature and the double compensation benefits provided by § 71-3-107 were not recoverable. Stafford v. U. S. Cattle Corp., 389 So. 2d 923, 1980 Miss. LEXIS 2116 (Miss. 1980).

Employment of minor in violation of law describing age limit is negligence per se, rendering employer liable for injury proximately resulting. Hartwell Handle Co. v. Jack, 149 Miss. 465, 115 So. 586, 1928 Miss. LEXIS 51 (Miss. 1928).

RESEARCH REFERENCES

Am. Jur.

48A Am. Jur. 2d, Labor and Labor Relations §§ 2814 et seq.

CJS.

51 C.J.S., Labor Relations § 4.

§ 71-1-19. Child labor in accord with school attendance.

It shall be unlawful for any person, firm, or corporation to employ, detain, or permit to work in any mill, cannery, workshop, factory, or manufacturing establishment in this state any child under the age of fourteen (14) years, or any child over the age of fourteen (14) years and under the age of sixteen (16) years, unless such child has complied with, or is complying with, the compulsory school attendance law. Such employer shall require such child to present the affidavit of the parent or guardian, or person standing in parental relation to such child, and the certificate of the superintendent or principal of the school of the district in which such child or children reside or in which they last attended school, stating the place and date of the birth of such child, the last school attendance of such child, the grade of study pursued, the name of the school, and the name of the teacher in charge. The employer shall preserve such affidavit and keep a complete register of all such affidavits, showing all the facts contained herein.

HISTORY: Codes, Hemingway's 1917, § 4517; 1930, § 4647; 1942, § 6987; Laws, 1914, ch. 164; Laws, 1924, ch. 314; Laws, 1930, ch. 46.

Cross References — Crime of enticing children for employment, see § 97-5-3.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Construction of prohibited work.
3. Effect of failure to acquire affidavit.

1. In general.

This section [Code 1942, § 6987] must be interpreted by reasoning on principle and according to usual and ordinary sense of words used. Graham v. Goodwin, 170 Miss. 896, 156 So. 513, 1934 Miss. LEXIS 183 (Miss. 1934).

2. Construction of prohibited work.

Employment as master and servant is not necessary under prohibition of this section [Code 1942, § 6987], it being sufficient that child is knowingly permitted or directed to work as if an employee and that permission or direction is by foreman who has supervision of that work. Graham v. Goodwin, 170 Miss. 896, 156 So. 513, 1934 Miss. LEXIS 183 (Miss. 1934).

With respect to what constitutes work in a mill or manufacturing establishment, use of same language in this section [Code 1942, § 6987] as in Hours of Labor Statute (Code 1942, § 6986) in same chapter of code is persuasive of legislative intent that same construction should be put on this section [Code 1942, § 6987] as on other statute, else different phraseology would have been inserted. Graham v. Goodwin, 170 Miss. 896, 156 So. 513, 1934 Miss. LEXIS 183 (Miss. 1934).

Work in rolling billets down ramp of stave mill where worker was in no way affected by machinery or manufacturing or operating part of mill held not within statute prohibiting child labor "in the mill or manufacturing establishment" so as to entitle boy under sixteen years of age to recover for injuries sustained in such work. Graham v. Goodwin, 170 Miss. 896, 156 So. 513, 1934 Miss. LEXIS 183 (Miss. 1934).

3. Effect of failure to acquire affidavit.

Employee 15 years old made prima facie case of negligence contributing to injury by showing employment by defendant without affidavit required. Anderson Mfg. Co. v. Wade, 151 Miss. 820, 119 So. 313, 1928 Miss. LEXIS 385 (Miss. 1928).

If negligence of employee 15 years old contributed to injury his damages should be reduced proportionately, though employed without affidavit. Anderson Mfg. Co. v. Wade, 151 Miss. 820, 119 So. 313, 1928 Miss. LEXIS 385 (Miss. 1928).

If 15 year old boy was employed without affidavit through his fraud and injury was caused solely by his negligence, employer was not liable. Anderson Mfg. Co. v. Wade, 151 Miss. 820, 119 So. 313, 1928 Miss. LEXIS 385 (Miss. 1928).

RESEARCH REFERENCES

ALR.

Lawn mowing by minors as violation of child labor statutes. 56 A.L.R.3d 1166.

Am. Jur.

48A Am. Jur. 2d, Labor and Labor Relations §§ 2814 et seq.

CJS.

51 C.J.S., Labor Relations § 4.

§ 71-1-21. Regulating hours of labor.

No boy or girl over fourteen (14) years of age and under sixteen (16) years shall be permitted to work in any mill, cannery, workshop, factory, or manufacturing establishment more than eight (8) hours in one (1) day, or more than forty-four (44) hours in any one (1) week, or be employed in or detained in any such establishment between the hours of 7 p.m. and 6 a.m.

HISTORY: Codes, Hemingway's 1917, §§ 4516, 4523; 1930, § 4646; 1942, § 6986; Laws, 1912, ch. 157; Laws, 1914, chs. 164, 169; Laws, 1916, ch. 239; Laws, 1924, ch. 314; Laws, 1981, ch. 439, § 1, eff from and after passage (approved March 30, 1981).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Establishments subject to regulation.
3. Persons protected.

1. In general.

In an action by an employee between the ages of 16 and 17 years to recover for injuries received while working with machinery, the circuit court properly upheld the denial of double compensation under § 71-3-107 for alleged violation by the employer of the working hours limit set forth in § 71-1-21, but erred in refusing to remand the case to the administrative judge for consideration of the employee's underlying claim. Abel v. Garan, Inc., 385 So. 2d 618, 1980 Miss. LEXIS 2029 (Miss. 1980).

With respect to what constitutes work in a mill or manufacturing establishment, use of same language in Child Labor Statute (Code 1942, § 6987) as in Hours of Labor Statute in same chapter of code is persuasive of legislative intent that the same construction should be put on Child Labor Statute as on other statute, else different phraseology would have been inserted. Graham v. Goodwin, 170 Miss. 896, 156 So. 513, 1934 Miss. LEXIS 183 (Miss. 1934).

Under Laws 1912, ch. 157 [Code 1942, § 6986] working employees in a manufacturing establishment for more than ten hours in any one day constitutes only one offense. Buckeye Cotton Oil Co. v. State, 103 Miss. 767, 60 So. 775, 1912 Miss. LEXIS 230 (Miss. 1912).

Whether an employee works more than ten hours a day depends upon the fact whether during the hours he is not actually working, he is confined to precincts of the establishment, charged with some responsibility for operation of the machinery. Buckeye Cotton Oil Co. v. State, 103 Miss. 767, 60 So. 775, 1912 Miss. LEXIS 230 (Miss. 1912).

Laws 1912, ch. 157 [Code 1942, § 6986] is a valid exercise of police power. State v. J. J. Newman Lumber Co., 102 Miss. 802, 59 So. 923, 1912 Miss. LEXIS 125 (Miss. 1912).

Regulations of lawful trade or business are within the exercise of the police power unless they are so unreasonable as to unnecessarily and arbitrarily interfere with or destroy property and personal rights of citizens. State v. J. J. Newman Lumber Co., 102 Miss. 802, 59 So. 923, 1912 Miss. LEXIS 125 (Miss. 1912).

Under Art. 4 § 33 Const. 1890, the legislature may enact laws regulating and providing for the safety, health, morals and general welfare of the public. State v. J. J. Newman Lumber Co., 102 Miss. 802, 59 So. 923, 1912 Miss. LEXIS 125 (Miss. 1912).

2. Establishments subject to regulation.

A cotton gin is a manufacturing establishment, and the hours of labor of gin employees are regulated by this section [Code 1942, § 6986]. Lopanic v. Berkeley Cooperative Gin Co., 191 So. 2d 108, 1966 Miss. LEXIS 1200 (Miss. 1966).

Fact that a mill is operated only about five months in each year does not render Laws 1912, ch. 157 [Code 1942, § 6986] inapplicable. Buckeye Cotton Oil Co. v. State, 103 Miss. 767, 60 So. 775, 1912 Miss. LEXIS 230 (Miss. 1912).

Corporation held to be engaged in "manufacturing." Buckeye Cotton Oil Co. v. State, 103 Miss. 767, 60 So. 775, 1912 Miss. LEXIS 230 (Miss. 1912).

3. Persons protected.

A 17-year-old boy employed in a cotton gin, who, on the date that he sustained injuries in the scope and course of his employment, had worked 12 hours a day for 6 days, approximately 72 hours of work, had been employed in violation of the provisions of this section [Code 1942, § 6986], and he was entitled to double compensation benefits for his injuries under the provisions of Code 1942, § 6998-54. Lopanic v. Berkeley Cooperative Gin Co., 191 So. 2d 108, 1966 Miss. LEXIS 1200 (Miss. 1966).

Laws 1916, ch. 239 [Code 1942, § 6986] applies only to employees working with or around machinery, and does not apply to an employee unloading from cars lumber which other employees were taking to the planing machines. Handy v. Mercantile Lumber Co., 121 Miss. 489, 83 So. 674, 1920 Miss. LEXIS 95 (Miss. 1920).

Laws 1912, ch. 157 [Code 1942, § 6986] applies only to such employees of a manufacturing establishment who compose the organized force and work with machinery, whose work supplements that of the machinery and must be performed at the same time in order to keep the machinery in operation. Buckeye Cotton Oil Co. v. State, 103 Miss. 767, 60 So. 775, 1912 Miss. LEXIS 230 (Miss. 1912).

Statement that an employee had general supervision of the operation of the mill held insufficient to show whether or not he was within the protection of Laws 1912, ch. 157 [Code 1942, § 6986]. Buckeye Cotton Oil Co. v. State, 103 Miss. 767, 60 So. 775, 1912 Miss. LEXIS 230 (Miss. 1912).

RESEARCH REFERENCES

ALR.

Lawn mowing by minors as violation of child labor statutes. 56 A.L.R.3d 1166.

Who is employed in "professional capacity," within exemption, under 29 USCS § 213(a)(1), from minimum wage and maximum hours provisions of Fair Labor Standards Act. 77 A.L.R. Fed. 681.

Am. Jur.

48A Am. Jur. 2d, Labor and Labor Relations §§ 2814 et seq.

CJS.

51B C.J.S., Labor Relations, §§ 1307, 1311, 1314.

Practice References.

Bender's Labor and Employment Bulletin (Matthew Bender).

Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Labor and Employment Law (Matthew Bender).

National Labor Relations Act: Law and Practice (Matthew Bender).

Laurie E. Leader, Wages and Hours: Law and Practice (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

§ 71-1-23. Sheriff to enforce law.

It shall be the special duty of the sheriff of the county in which the mill, cannery, workshop, factory, or manufacturing establishment employing child labor is located to visit, at least once each month, such mill, cannery, workshop, factory, or manufacturing establishment to see to the enforcement of this chapter.

HISTORY: Codes, Hemingway's 1917, § 4518; 1930, § 4648; 1942, § 6988; Laws, 1914, ch. 164; Laws, 1924, ch. 314.

Cross References — Duty of sheriff with offenders, see § 19-25-67.

§ 71-1-25. County health officer to inspect.

It shall be the duty of the county health officer to visit, without notice of his intention to do so, all mills, canneries, workshops, factories, or manufacturing establishments employing child labor within his county at least twice each year, or oftener if requested by the sheriff, and to promptly report to the sheriff any unsanitary condition of the premises, any child or children afflicted with infectious, contagious, or communicable diseases, or whose physical condition renders such child or children incapacitated to perform the work required of them. The sheriff shall promptly remove such child or children from such mill, cannery, workshop, factory, or manufacturing establishment, and order the premises put in sanitary condition. The judgment of the county health officer as to the physical condition of the children and the sanitary condition of the premises shall be final and conclusive.

HISTORY: Codes, Hemingway's 1917, § 4519; 1930, § 4649; 1942, § 6989; Laws, 1914, ch. 164; Laws, 1924, ch. 314.

Cross References — Appointment of county health officer, see § 41-3-37.

RESEARCH REFERENCES

Am. Jur.
61 Am. Jur. 2d, Plant and Job Safety – OSHA and State Laws §§ §§ 54-57, 59-62, 64, 65.

CJS.
51 C.J.S., Labor Relations § 3.

§ 71-1-27. Misdemeanor to fail or refuse to obey order of officer.

Any officer, manager, or superintendent of any mill, cannery, workshop, factory, or manufacturing establishment in which child labor is employed who shall fail or refuse to give true and correct information demanded of him by any officer hereinbefore directed to inspect such mill, cannery, workshop, factory, or manufacturing establishment, or who shall fail or refuse to obey any lawful order of the sheriff or health officer of the county in which said mill, cannery, workshop, factory, or manufacturing establishment is located for carrying out the purpose of this chapter, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than Ten Dollars ($10.00) nor more than One Hundred Dollars ($100.00).

HISTORY: Codes, Hemingway's 1917, § 4521; 1930, § 4650; 1942, § 6990; Laws, 1914, ch. 164; Laws, 1924, ch. 314.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 71-1-29. Misdemeanor to violate child labor laws.

Any person, firm, or corporation, or the superintendent or any officer of the mill, cannery, workshop, factory, or manufacturing establishment employing any child, or permitting any child to be employed by or to work in, or to be detained in any mill, cannery, workshop, factory, or manufacturing establishment in this state contrary to law shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than Fifty Dollars ($50.00) nor more than One Hundred Dollars ($100.00), or may be sentenced to the county jail for not less than ten (10) days nor more than sixty (60) days, or both such fine and imprisonment.

HISTORY: Codes, Hemingway's 1917, § 4522; 1930, § 4651; 1942, § 6991; Laws, 1914, ch. 164; Laws, 1924, ch. 314.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
48A Am. Jur. 2d, Labor and Labor Relations §§ 2814 et seq.

§ 71-1-31. Certain canneries excepted.

The provisions of Sections 71-1-17 through 71-1-29 shall not apply to fruit or vegetable canneries.

HISTORY: Code, 1930, § 4652; 1942, § 6992; Laws, 1924, ch. 314.

§ 71-1-33. Repealed.

Repealed by Laws, 1981, ch. 310, § 1, eff from and after passage (approved March 2, 1981).

§ 71-1-33. [Codes, Hemingway's 1917, § 4527; 1930, § 4653; 1942, § 6993; Laws, 1914, ch. 165]

Editor's Notes — Former § 71-1-33 made provisions for work hours for females.

§ 71-1-35. Pay of employees twice a month.

(1) Every corporation, company, association, partnership and individual person engaged in manufacturing of any kind in this state employing as many as fifty (50) or more employees and employing public labor, and every public service corporation doing business in this state shall be required to make full payment to employees for services performed as often as once every two (2) weeks or twice during each calendar month, or on the second and fourth Saturday, respectively, of each month. Such payment or settlement shall include all amounts due for labor or services performed up to not more than ten

(10) days previous to the time of payment, except that public service corporations shall not be required to make payment for labor or services performed up to more than fifteen (15) days prior to the time of payment.

(2) For the purposes of this section, the term "employee" shall not include any individual employed in a bona fide executive, administrative or professional capacity.

HISTORY: Codes, Hemingway's 1917, § 4530; 1930, § 4654; 1942, § 6994; Laws, 1916, ch. 241; Laws, 1991, ch. 407, § 1, eff from and after July 1, 1991.

Cross References — Lien for wages due, see §§ 85-7-1 et seq.

RESEARCH REFERENCES

ALR.

Validity of minimum wage statutes relating to private employment. 39 A.L.R.2d 740.

Promise by employer to pay bonus as creating valid and enforceable contract. 43 A.L.R.3d 503.

Who is employed in "professional capacity," within exemption, under 29 USCS § 213(a)(1), from minimum wage and maximum hours provisions of Fair Labor Standards Act. 77 A.L.R. Fed. 681.

Am. Jur.

48A Am. Jur. 2d, Labor and Labor Relations §§ 2814 et seq.

7B Am. Jur. Legal Forms 2d, Employment Contracts § 99:126 (compensation of employee; time of payment of salary-semimonthly).

22 Am. Jur. Proof of Facts 2d 643, Employee's Right to Compensation for Extra Services Requested by Employer.

CJS.

51B C.J.S., Labor Relations § 1299.

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National Labor Relations Act: Law and Practice (Matthew Bender).

Laurie E. Leader, Wages and Hours: Law and Practice (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

§ 71-1-37. Discounting trade checks prohibited.

Every person, company, association, partnership, manufacturing company, or railroad company now existing or hereafter organized in this state engaged in employing labor for manufacturing purposes, or any railroad within this state shall be prohibited from discounting any trade check, coupons, or other written instrument issued for the payment of such labor. It shall be unlawful for any person, partnership, corporation, or trade establishment purchasing said trade checks, coupons, or other instruments issued for the payment of such labor to discount the same. Any person, partnership, corporation, or trade establishment purchasing the same at a discount, or any company, corporation, railroad, or other person issuing said checks, coupons, or other written instruments who shall discount the same in settlement with the employees shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than Ten Dollars ($10.00) and not more than Fifty Dollars ($50.00) for each offense.

HISTORY: Codes, Hemingway's 1917, § 4532; 1930, § 4656; 1942, § 6996; Laws, 1914, ch 138.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
48A Am. Jur. 2d, Labor and Labor Relations §§ 2814 et seq.

CJS.
51B C.J.S., Labor Relations § 1302.

§ 71-1-39. Trade checks must be paid in cash.

All persons, firms, or corporations engaged in manufacturing and issuing trade checks, coupons, or other instruments of writing in payment for labor shall, on or after the regular pay day, cash said check or checks so issued at their face value less any amount that may be due by the party to whom issued. Any such person, firm, or corporation so engaged in manufacturing and failing to settle such claim as herein required shall be liable to pay to the holder thereof twenty-five per cent. (25%) on the face of said check as damages in the event any suit or action shall be brought to enforce the payment thereof. This section shall only apply when the amount claimed is One Hundred Dollars ($100.00) or less.

HISTORY: Codes, Hemingway's 1917, § 4533; 1930, § 4657; 1942, § 6997; Laws, 1914, ch. 138.

JUDICIAL DECISIONS

1. In general.
Trade checks providing on their face that they were not transferable did not violate Code 1906, § 4001, providing that all promissory notes, and other writings for the payment of money, or other thing, may be assigned by indorsement whether the same be payable to order or assigns. Moody v. Finkbine Lumber Co., 122 Miss. 407, 84 So. 385, 1920 Miss. LEXIS 443 (Miss. 1920).

RESEARCH REFERENCES

Am. Jur.
48A Am. Jur. 2d, Labor and Labor Relations §§ 3818 et seq.

CJS.
51B C.J.S., Labor Relations §§ 1302, 1303 et seq.

§ 71-1-41. Employee trust plan.

A trust of real or personal property, or real and personal property combined, created either heretofore or hereafter by an employer as part of a pension plan, disability or death benefit plan, or profit-sharing plan for the exclusive benefit of some or all of his or its employees, to which contributions are made by such employer or employees, or both, for the purpose of distributing to such employees the earnings and the principal of such trust, shall not be deemed to be invalid as violating any existing laws against perpetuities, restraints on alienation, suspension of the power of alienation, or the accumulation of income; but such a trust may continue for such time as may be necessary to accomplish the purpose for which it may be created.

No trust of real or personal property, or real and personal property combined, created either heretofore or hereafter under a retirement plan for which provision has been made under the laws of the United States of America exempting such trust from federal income tax shall be deemed to be invalid as violating any existing laws against perpetuities, restraints on alienation, suspension of the power of alienation of title to property, or the accumulation of income; but such a trust may continue for such time as may be necessary to accomplish the purposes for which it may be created, may be permitted to accumulate the income arising from the property held therein until such time as such income shall become distributable to the beneficiary or beneficiaries under the terms of the trust, may according to its terms be made irrevocable, and the interests of its beneficiary or beneficiaries therein may be made nontransferable by assignment or otherwise.

HISTORY: Codes, 1942, § 6995.5; Laws, 1954, ch. 205.

Cross References — Public employees' retirement and disability benefits, see §§ 25-11-101 et seq.

Federal Aspects— Employee Retirement Income Security Act, see 29 USCS §§ 1001 et seq.

RESEARCH REFERENCES

ALR.

Construction and operation of private pension plan for distribution of pension funds upon termination of plan. 55 A.L.R.3d 767.

What constitutes order made pursuant to state domestic relations law for purposes of qualified domestic relations order exception to antialienation provision of Employee Retirement Income Security Act of 1974 (29 USCS § 1056(d)). 79 A.L.R.4th 1081.

§ 71-1-43. Income or principal of employee trust plan not to be encumbered.

The income or principal payable to a beneficiary or beneficiaries under any trust created by an employer as part of a pension plan, disability or death benefit plan, profit-sharing plan, or under any trust created under a retirement plan for which provision has been made under the laws of the United States of America exempting such trust from federal income tax shall not be pledged, assigned, transferred, sold, or in any manner whatsoever accelerated, anticipated, or encumbered by the beneficiary or beneficiaries. Nor shall any income or principal be in any manner subject or liable in the hands of the trustee for the debts, contracts, or engagements of the beneficiary or beneficiaries, or be subject to any assignment or other involuntary alienation or disposition whatsoever. Nor shall any income or principal be subject to the levy of any execution, writ of attachment, or garnishment thereon.

HISTORY: Codes, 1942, § 6995.3; Laws, 1954, ch. 206.

Cross References — Remedy by attachment, see §§ 11-33-1, 11-33-23.
Suggestion of exemption from garnishment, see § 11-35-33.
Levy of execution and attachment, see §§ 13-3-123 et seq.
Property exempt from taxation, see §§ 27-31-1 et seq.
Descent of exempt property, see §§ 91-1-19 et seq.
Federal Aspects— Employee Retirement Income Security Act, see 29 USCS §§ 1001 et seq.

JUDICIAL DECISIONS

1. In general.

Bankruptcy debtor's exemption claims in his simplified employee pension-individual retirement accounts (SEP-IRA) extended only to amounts reasonably necessary for support of debtor as well as of any dependents. In re Henderson, 167 B.R. 67, 1993 Bankr. LEXIS 2177 (Bankr. N.D. Miss. 1993).

RESEARCH REFERENCES

ALR.

Private pension plan: construction of provision authorizing employer to terminate or modify plan. 46 A.L.R.3d 464.

Right of trustee of land having interest therein to purchase on his own behalf in association with foreclosure by third-party lienor, in absence of express trust provision. 30 A.L.R.4th 732.

What constitutes order made pursuant to state domestic relations law for purposes of qualified domestic relations order exception to antialienation provision of Employee Retirement Income Security Act of 1974 (29 USCS § 1056(d)). 79 A.L.R.4th 1081.

§ 71-1-45. Assignment or pledge of wages.

No assignment or pledge of wages, in any form, made or executed directly or collaterally in the payment of, or as security for, the purchase of or contract to purchase any goods, wares, or merchandise shall be valid against or binding upon any employer, or the wages of any employee in the hands of, or owing, or to become owing to such employee, unless the assignee or pledgee thereof shall, prior to the delivery of the goods, wares, or merchandise so purchased or prior to consummation of any contract to purchase the same, serve upon the employer of such assignor, or pledgor, a duly executed copy of such assignment, or pledge, or contract to purchase and obtain such employer's acceptance of notice thereof and agreement in writing to be bound by the terms of such assignment or pledge.

HISTORY: Codes, 1942, § 275; Laws, 1940, ch. 291.

RESEARCH REFERENCES

ALR.

Law governing assignment of wages or salary. 1 A.L.R.3d 927.

Garnishee's duty to give debtor notice of garnishment prior to delivery of money without judgment against the garnishee on the debt. 36 A.L.R.4th 824.

Validity and enforceability of provision that employer shall be liable for stipulated damages on breach of employment contract. 40 A.L.R.4th 285.

Am. Jur.

6 Am. Jur. 2d, Assignments §§ 64 et seq., 81.

2B Am. Jur. Legal Forms 2d, Assignments §§ 25:11 et seq. (wages); §§ 25:211 et seq. (consent to assignment).

§ 71-1-47. Denial or abridgment of work.

It is hereby declared to be the public policy of Mississippi that the right of a person or persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization:

(a) Any agreement or combination between any employer and any labor union or labor organization whereby any person not a member of such union or organization shall be denied the right to work for an employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be an illegal combination or conspiracy and against public policy.

(b) No person shall be required by an employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment by such employer.

(c) No person shall be required by an employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment.

(d) No employer shall require any person, as a condition of employment or continuation of employment, to pay any dues, fees, or other charges of any kind to any labor union or labor organization.

(e) Any person who may be denied employment or be deprived of continuation of his employment in violation of any paragraph of this section shall be entitled to recover from such employer and from any other person, firm, corporation, or association acting in concert with him, by appropriate action in the courts of this state, such actual damages as he may have sustained by reason of such denial or deprivation of employment.

(f) The provisions of this section shall not apply to any lawful contract now in force, but they shall apply to all contracts hereafter entered into and to any renewal or extension of an existing contract hereafter occurring.

(g) The provisions of this section shall not apply to any employer or employee under the jurisdiction of the Federal Railway Labor Act.

HISTORY: Codes, 1942, § 6984.5; Laws, 1954, ch. 249, §§ 1, 2.

Federal Aspects— Railway Labor Act, see 45 USCS §§ 151 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Federal preemption.

1. In general.

Although an allegation that an applicant for employment must agree to permit the employer to deduct a designated amount from his paycheck, which is then sent to the union, could constitute a violation of this section, the court did not have jurisdiction over the subject matter where plaintiff failed to allege a jurisdictional basis for the court to hear such a claim. MacKenzie v. International Union of Operating Engineers, 472 F. Supp. 1025, 1979 U.S. Dist. LEXIS 11966 (N.D. Miss. 1979).

2. Federal preemption.

National Labor Relations Act does not allow Mississippi to prohibit unions from requiring non-union members to pay a hiring hall fee; Mississippi's right to work law is therefore preempted by federal law to the extent that it prohibits non-union members from being required to pay hiring hall fees. Simms v. Local 1752, Int'l Longshoremen Ass'n, 838 F.3d 613, 2016 U.S. App. LEXIS 17679 (5th Cir. Miss. 2016).

RESEARCH REFERENCES

ALR.

Validity and construction of "right to work" laws. 92 A.L.R.2d 598.

Liability, under statute, of labor union or its membership for torts committed in connection with primary labor activities-state cases. 85 A.L.R.4th 979.

What interrogation by employer's owner or executive officer during union organizing campaign constitutes unfair labor practice. 92 A.L.R. Fed. 461.

Employer's statements, during union organizational campaign, to effect that plant or business will close or relocate if union is successful as unfair labor practice under 29 USCS § 158(a)(1), (c). 93 A.L.R. Fed. 335.

What interrogation by plant manager or superintendent during union organizing campaign constitutes unfair labor practice. 93 A.L.R. Fed. 580.

What interrogation by department manager, supervisor, or foreman during union organizing campaign constitutes unfair labor practice. 94 A.L.R. Fed. 140.

Pre-emption, by § 301(a) of Labor-Management Relations Act of 1947 (29 USCS § 185(a)), of employee's state-law action for infliction of emotional distress. 101 A.L.R. Fed. 395.

"Mass discharge" of employees as evidence of unfair labor practice under §§ 8(a)(1) and (3) of National Labor Relations Act (29 USCS § 158(a)(1), (3)). 137 A.L.R. Fed. 445.

Am. Jur.

48 Am. Jur. 2d, Labor and Labor Relations § 1068.

10A Am. Jur. Legal Forms 2d, Labor and Labor Relations §§ 159:12 et seq. (organization of employees).

10A Am. Jur. Legal Forms 2d, Labor and Labor Relations §§ 159:49 et seq. (collective bargaining agreements).

35 Am. Jur. Proof of Facts 2d 209, Harassment or Termination of Employee Due to Religious Beliefs or Practices.

CJS.

51 C.J.S., Labor Relations § 10.

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Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

§ 71-1-49. Certain persons prohibited from labor management functions.

(1) No person who is an alien, or who is or has been a member of the Communist Party, or who has been convicted of or served any part of a prison term resulting from his conviction of robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, or conspiracy to commit any such crimes, shall serve:

(a) as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, or other employee (other than as an employee performing exclusively clerical or custodial duties) of any labor organization, or as a manager, or any person occupying a bargaining position with industry, or

(b) as a labor relations consultant either of a labor organization or of an employer or both, or as an officer, director, agent, or employee (other than as an employee performing exclusively clerical or custodial duties) of any group or association of employers dealing with any labor organization, during or for five (5) years after the termination of his membership in the Communist Party, or for five (5) years after such conviction, or after the end of such imprisonment. No labor organization, group or association of employers, or officer thereof shall knowingly permit any person to assume or hold any office or paid position in violation of this section.

(2) Any person who willfully violates this section shall be guilty of a misdemeanor and, upon conviction thereof, be fined not more than One Thousand Dollars ($1,000.00) or imprisoned for not more than one (1) year, or both.

(3) For the purposes of this section, any person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event, regardless of whether such conviction occurred before or after July 1, 1960.

HISTORY: Codes, 1942, § 6984.7; Laws, 1960, ch. 251, §§ 1-5.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.

48 Am. Jur. 2d, Labor and Labor Relations §§ 1159 et seq.

CJS.

51 C.J.S., Labor Relations §§ 55, 119.

§ 71-1-51. Repealed.

Repealed by Laws, 1974, ch. 500, § 21, eff from and after passage (approved April 2, 1974).

§ 71-1-51. [Codes, 1942, § 6998; Laws, 1934, ch. 295]

Editor's Notes — Former § 71-1-51 concerned inspection of steam boilers.

§ 71-1-53. Penalty for violation of this chapter.

Any corporation or person or manager of any company or partnership who violates any of the provisions of this chapter for which a penalty is not otherwise provided shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than Twenty-five Dollars ($25.00) nor more than Two Hundred Fifty Dollars ($250.00) for each offense; and each day's violation shall constitute a separate offense.

HISTORY: Codes, Hemingway's 1917, § 4531; 1930, § 4655; 1942, § 6995; Laws, 1914, ch. 167.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 71-1-55. Discrimination against breast-feeding mother who uses lawful break time to express milk prohibited.

No employer shall prohibit an employee from expressing breast milk during any meal period or other break period provided by the employer.

HISTORY: Laws, 2006, ch. 520, § 12, eff from and after passage (approved Apr. 3, 2006).

CHAPTER 3.

WORKERS' COMPENSATION

General Provisions. 71-3-1
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§ 71-3-1. Citation; purpose; construction.

(1) This chapter shall be known and cited as "Workers' Compensation Law," and shall be administered by the Workers' Compensation Commission, hereinafter referred to as the "commission," cooperating with other state and federal authorities for the prevention of injuries and occupational diseases to workers and, in event of injury or occupational disease, their rehabilitation or restoration to health and vocational opportunity; and this chapter shall be fairly and impartially construed and applied according to the law and the evidence in the record, and, notwithstanding any common law or case law to the contrary, this chapter shall not be presumed to favor one party over another and shall not be liberally construed in order to fulfill any beneficent purposes.

(2) Wherever used in this chapter, or in any other statute or rule or regulation affecting the former Workmen's Compensation Law and any of its functions or duties:

(a) The words "workmen's compensation" shall mean "workers' compensation"; and

(b) The word "commission" shall mean the Workers' Compensation Commission.

(3) The primary purposes of the Workers' Compensation Law are to pay timely temporary and permanent disability benefits to every worker who legitimately suffers a work-related injury or occupational disease arising out of and in the course of his employment, to pay reasonable and necessary medical expenses resulting from the work-related injury or occupational disease, and to encourage the return to work of the worker.

HISTORY: Codes, 1942, § 6998-01; Laws, 1948, ch. 354, § 1; Laws, 1960, ch. 275; Laws, 1968, ch. 559, § 1; reenacted without change, Laws, 1982, ch. 473, § 1; Laws, 1984, ch. 408; reenacted without change, Laws, 1990, ch. 405, § 1; Laws, 2012, ch. 522, § 1, eff from and after July 1, 2012.

Editor's Notes — Laws of 2012, ch. 522, §§ 10 and 11, provide:
"SECTION 10. The Workers' Compensation Commission shall promulgate a written statement specifying the changes made to the Workers' Compensation Law by this act to every employer in this state subject to the Workers' Compensation Law. Within ten (10) days of receipt of this written statement from the Commission, every employer shall post the Commission's statement in a conspicuous place or places in and about his place or places of business and adjacent to the Notice of Coverage as required by Section 71-3-81.
"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, and shall apply to injuries occurring on or after July 1, 2012."

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Validity of statute.
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4. —Causal connection.
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1. In general.

Workers' Compensation Act contemplates three-party agreement among employer, employee, and compensation insurance carrier. Although employer is considered to be insured party, Act views employee as intended beneficiary of insurance contract. Thus, when employer-insured contracts with insurer for benefit of its employee-third party beneficiary, insurer owes same duty to designate a third party as it owes to insured, entity which actually makes contract. McFadden v. Liberty Mut. Ins. Co., 803 F. Supp. 1178, 1992 U.S. Dist. LEXIS 15913 (N.D. Miss. 1992), aff'd, 988 F.2d 1210, 1993 U.S. App. LEXIS 6486 (5th Cir. Miss. 1993).

An employee's injury did not arise out of and in the course of his employment as a sack boy at a grocery store where the injury occurred when a firecracker which the employee had been given by another worker exploded in his hand, and the store had a policy of no foul play, which included fireworks, so that the employee's conduct was against the rules of the business; the accident and injury were the result of the employee's own misuse of and involvement with an object which was prohibited and outside the scope of the employee's employment, and therefore the injury sustained was not compensable. Mathis v. Nelson's Foodland, Inc., 606 So. 2d 101, 1992 Miss. LEXIS 49 (Miss. 1992).

Decisions of the Mississippi Workers' Compensation Commission on issues of fact will not be overturned if they are supported by substantial evidence. The Commission is the trier of facts as well as the judge of the credibility of the witnesses. Doubtful cases should be resolved in favor of compensation so as to fulfill the beneficial purposes of the statute. Miller Transporters, Inc. v. Guthrie, 554 So. 2d 917, 1989 Miss. LEXIS 495 (Miss. 1989).

The Workers' Compensation Commission has no authority to grant declaratory judgments, render advisory opinions, or try equitable issues, or other issues, outside the statutes. Bullock v. Roadway Express, Inc., 548 So. 2d 1306, 1989 Miss. LEXIS 421 (Miss. 1989).

In doubtful cases, the doubt would be resolved in favor of compensation so that the purpose of the Workmen's Compensation Act may be carried out. Barham v. Klumb Forest Products Center, Inc., 453 So. 2d 1300, 1984 Miss. LEXIS 1843 (Miss. 1984).

It was never the intent of the legislature by enacting the workmen's compensation law to impair the lawful right to contract. Granite State Ins. Co. v. Marshall, 275 So. 2d 386, 1973 Miss. LEXIS 1363 (Miss. 1973).

The Mississippi Workmen's Compensation Commission is vested with full and complete jurisdiction to hear and determine claims for benefits under the Workmen's Compensation Law. Everitt v. Lovitt, 192 So. 2d 422, 1966 Miss. LEXIS 1257 (Miss. 1966).

The purpose of the Workmen's Compensation Law is to facilitate the payment of compensation without delay and without unnecessary cost. H. C. Moody & Sons v. Dedeaux, 223 Miss. 832, 79 So. 2d 225, 1955 Miss. LEXIS 445 (Miss. 1955).

One of the primary purposes of the Workmen's Compensation Law is to relieve society of the burden of supporting in orphanages or public almshouses helpless children, who have been left without means of support because of the death of wage earners who have lost their lives in industrial accidents, and the benefits of the Law are not limited to children begotten in lawful wedlock. Stanley v. McLendon, 220 Miss. 192, 70 So. 2d 323, 1954 Miss. LEXIS 425 (Miss. 1954).

2. Validity of statute.

The Workmen's Compensation Law does not violate the constitutional provision that the circuit court shall have original jurisdiction in all matters civil and criminal in the state, not vested by the constitution in some other court. Hartfield v. Standard Oil Co., 220 Miss. 569, 71 So. 2d 449, 1954 Miss. LEXIS 473 (Miss. 1954).

The Workmen's Compensation Law does not violate the constitutional provision that judges of the civil courts of the state shall, before they proceed to execute the duties of the respective offices, take specified oath or affirmation. Allen v. R. G. Le Tourneau, Inc., 220 Miss. 520, 71 So. 2d 447, 1954 Miss. LEXIS 465 (Miss. 1954).

The Workmen's Compensation Law does not violate the due process provisions of the state constitution in that it abrogates right of action for personal injuries recognized by the common law, or right of action for personal injury and wrongful death created by statutes; or because it subjects the employer to liability for compensation to his injured employee without regard to any neglect or default on the part of the employer or any other person for whom he is responsible; or because the employee's rights are interfered with, in that he is prevented from having compensation for injuries arising from the employer's fault commence with the damages actually sustained, and is limited to the measure of the compensation prescribed by the Law; or because both the employer and the employee are deprived of their liberty to acquire property by being prevented from making such agreement as they may choose to make respecting terms of employment. Walters v. Blackledge, 220 Miss. 485, 71 So. 2d 433, 1954 Miss. LEXIS 464 (Miss. 1954).

The Workmen's Compensation Law is not invalid because it undertakes to put all laborers or employees in one class, or because it undertakes to compensate persons of widely differing rights, or persons of widely differing ages, or persons of widely differing responsibilities as to their families under one standard of compensation. Walters v. Blackledge, 220 Miss. 485, 71 So. 2d 433, 1954 Miss. LEXIS 464 (Miss. 1954).

The Workmen's Compensation Law is not unconstitutional because it makes no discrimination between employees who have been guilty of negligence and employees who have exercised due care or because it denies the injured employee the right to have damages assessed by a jury according to the conventional methods of the common law. Walters v. Blackledge, 220 Miss. 485, 71 So. 2d 433, 1954 Miss. LEXIS 464 (Miss. 1954).

The Workmen's Compensation Law does not impair right of employer and employee to contract. Walters v. Blackledge, 220 Miss. 485, 71 So. 2d 433, 1954 Miss. LEXIS 464 (Miss. 1954).

The Workmen's Compensation Law does not violate constitutional provision that the right of trial by jury shall remain inviolate inasmuch as that provision guarantees a jury trial only in those cases where a jury was necessary according to the principles of common law. Walters v. Blackledge, 220 Miss. 485, 71 So. 2d 433, 1954 Miss. LEXIS 464 (Miss. 1954).

The Workmen's Compensation Law does not violate constitutional provision providing that all courts shall be open and that every person, for an injury done him in his lands, goods, person or reputation, shall have the remedy by due process of law, and that right and justice shall be administered without sale, denial or delay. Walters v. Blackledge, 220 Miss. 485, 71 So. 2d 433, 1954 Miss. LEXIS 464 (Miss. 1954).

Workmen's Compensation Law which allows payments of compensation to acknowledged illegitimate child dependent upon deceased's labor, and to bigamous wife upon death of the putative husband is not repugnant to the Constitution nor any public policy in regard to bigamy. Pathfinder Coach Div. of Superior Coach Corp. v. Cottrell, 216 Miss. 358, 62 So. 2d 383, 1953 Miss. LEXIS 646 (Miss. 1953).

3. Construction.

Circuit court properly reversed an order of Mississippi's Workers' Compensation Commission because an employer was obligated to furnish surgical intervention that a competent treating physician deemed necessary and reasonable, even though another treating physician disagreed with the recommendation. Hardaway Co. v. Bradley, 881 So. 2d 241, 2003 Miss. App. LEXIS 967 (Miss. Ct. App. 2003).

Provisions of the Workers' Compensation Act are to be construed liberally, and doubtful cases are to be resolved in favor of compensation so that beneficent purposes of Act may be achieved. Holbrook by & Through Holbrook v. Albright Mobile Homes, 703 So. 2d 842, 1997 Miss. LEXIS 636 (Miss. 1997).

Workers' Compensation claims, and laws that govern them, are to be construed broadly and liberally in favor of claimant. Mississippi Transp. Comm'n v. Dewease, 691 So. 2d 1007, 1997 Miss. LEXIS 142 (Miss. 1997).

The workers' compensation law is construed liberally and doubtful cases are to be resolved in favor of compensation so that the beneficent purposes of the act may be achieved. Robinson v. Packard Electric Div., General Motors Corp., 523 So. 2d 329, 1988 Miss. LEXIS 199 (Miss. 1988).

To totally bar an injured employee of an independent contractor performing work on the premises of another from recovering on a third-party claim against that landowner for injuries sustained as a result of negligence on the part of one of such landowner's employees who was not a loaned servant of the independent contractor would totally undermine the purpose, letter and spirit of the Mississippi Workman's Compensation Act. Ramsey v. Georgia-Pacific Corp., 511 F. Supp. 393, 1981 U.S. Dist. LEXIS 9498 (S.D. Miss. 1981), aff'd, 671 F.2d 1376, 1982 U.S. App. LEXIS 21589 (5th Cir. Miss. 1982).

A route salesman who stopped to assist an apparently disabled motorist and who was rendered permanently and totally disabled when the motorist struck him with a gun was entitled to workmen's compensation, despite the employer's contention that his injuries did not arise out of and in the course of his employment within the meaning of § 71-3-3(b); an employer may reasonably foresee that his traveling employee will stop to aid a distressed motorist when implored to do so, and since the present claimant's injury resulted from a humanitarian act which was literally thrown into his path because of his employment, the employee was entitled to compensation. The singular purpose pervading the Workmen's Compensation Act is to promote the welfare of laborers within the state, and it should be construed fairly to further its humanitarian aims. Big "2" Engine Rebuilders v. Freeman, 379 So. 2d 888, 1980 Miss. LEXIS 1834 (Miss. 1980).

The 1960 amendment to this section [Code 1942, § 6998-01] which added the statement that the Workmen's Compensation Law should be "fairly construed" is not indicative of any ascertainable or judicially determinable legislative intent, and did not abrogate the rule of liberal construction. L. B. Priester & Son, Inc. v. Bynum, 244 Miss. 185, 137 So. 2d 907, 1962 Miss. LEXIS 438 (Miss. 1962).

The 1960 amendment to this section [Code 1942, § 6998-01] stating that "this act shall be fairly construed according to the law and the evidence" did not cause any substantive change in its interpretation and application, since the same purpose manifestly and necessarily existed when the original statute was enacted in 1948. L. B. Priester & Son, Inc. v. Bynum, 244 Miss. 185, 137 So. 2d 907, 1962 Miss. LEXIS 438 (Miss. 1962).

The Workmen's Compensation Law must receive a common-sense and a liberal construction in the light of the legislative purpose. Ross v. Ross, 240 Miss. 84, 126 So. 2d 512, 1961 Miss. LEXIS 434 (Miss. 1961).

The amendment of 1960 substituting a fair interpretation for the previous liberal interpretation of the Workmen's Compensation Law is not applicable to cases of injuries sustained prior thereto. Mississippi Highway Patrol v. Dependents of Neal, 239 Miss. 505, 124 So. 2d 120, 125 So. 2d 544, 1960 Miss. LEXIS 315 (Miss. 1960).

There should be accorded to the Workmen's Compensation Law a broad, liberal construction that doubtful cases should be resolved in favor of compensation and that the humane purposes for which these acts seek to serve leave no room for narrow technical constructions. Central Electric Power Asso. v. Hicks, 236 Miss. 378, 110 So. 2d 351, 112 So. 2d 230, 1959 Miss. LEXIS 330 (Miss. 1959).

The Workmen's Compensation Law is to be liberally construed. Employers Liability Ins. Co. v. Haltom, 235 Miss. 74, 108 So. 2d 29, 1959 Miss. LEXIS 404 (Miss. 1959).

Under the Workmen's Compensation Law a minor employee may maintain a suit for compensation benefits and may receive payments, in the absence of statutory provisions to the contrary. H. C. Moody & Sons v. Dedeaux, 223 Miss. 832, 79 So. 2d 225, 1955 Miss. LEXIS 445 (Miss. 1955).

Although evasions of coverage under the Workmen's Compensation Law should not be permitted, the courts must balance the terms of this legislation against the rights of persons to create a legitimate contractual relationship of vendor and vendee. Nelson v. Slay, 216 Miss. 640, 63 So. 2d 46, 1953 Miss. LEXIS 679 (Miss. 1953).

A denial of an award, however harsh it may be construed by an employee, points up the purpose of the Workmen's Compensation Law to grant compensation under liberal interpretation, and at the same time to require, in the interest of the carrier of the employer, compliance with the prerequisite conditions. Ingalls Shipbuilding Corp. v. Byrd, 215 Miss. 234, 60 So. 2d 645, 1952 Miss. LEXIS 558 (Miss. 1952).

The Workmen's Compensation Law should be given a liberal interpretation in order to effect its salutary purposes but sight must not be lost of the fact that it is the duty of the court to construe the Law as it is written. Brookhaven Steam Laundry v. Watts, 214 Miss. 569, 55 So. 2d 381, 1951 Miss. LEXIS 521 (Miss. 1951).

4. —Causal connection.

Mississippi Workers' Compensation Commission's decision that a worker suffered an accidental injury, pursuant to Miss. Code Ann. § 71-3-3(b), within the course and scope of the worker's employment, pursuant to Miss. Code Ann. § 71-3-1(3), was not contrary to the overwhelming weight of the evidence because, although no one saw the worker pick a tire up and injure the worker's back, the worker informed the worker's supervisor immediately following the injury, and the supervisor testified that the worker emerged from beneath a van, stood up, and stated that the worker's back was bothering the worker. The only contradictory evidence presented was by the store manager, who claimed that the worker never said that the worker hurt the worker's back; however, the manager did admit that the worker complained of the worker's back hurting, and the administrative judge found that the testimony of the worker was definitely more credible than that of the store manager. Performance Tire & Wheel, Inc. v. Rhoads, 113 So. 3d 1262, 2013 Miss. App. LEXIS 195 (Miss. Ct. App. 2013).

The Workers' Compensation Commission's denial of benefits to an asthmatic employee would be reversed, even though a physician testified that there was not a "strong work-related causal connection between [the employee's] pneumonia and emphysema," where medical testimony established a causal connection between the exacerbation of her pre-existing respiratory problems and the inhalation of irritants in her work environment, and the employee's uncontroverted testimony of the onset pain in her side and back along with shortness of breath while she was performing her job duties established that her injury arose out of and in the course of her employment. Hedge v. Leggett & Platt, 641 So. 2d 9, 1994 Miss. LEXIS 362 (Miss. 1994).

A circuit court judgment affirming the Workers' Compensation Commission's denial of benefits to a deceased employee's children was not supported by substantial evidence and would be reversed where the onset of the employee's death occurred at her place of employment and the employer failed to rebut the presumption that the employee's work activities did not cause or contribute to the condition from which she died; the unrebutted "found dead" legal presumption prevailed, satisfying the causal connection between the employee's work duties and the condition which resulted in her death. Nettles v. Gulf City Fisheries, 629 So. 2d 554, 1993 Miss. LEXIS 545 (Miss. 1993).

A groundskeeper's aid was not acting within the scope of his employment when he drowned in a swimming pool, and therefore his parents were not barred by the exclusive remedy provisions of the Mississippi Workers' Compensation Act from bringing a wrongful death action on his behalf, where the employee was not required by his job duties to be in the vicinity of the swimming pool, he was supposed to be hoeing grass from a sidewalk outside the fence surrounding the pool at the time he entered the pool area, and the employer had specifically instructed the employee to stay away from the pool because he could not swim. Estate of Brown by Brown v. Pearl River Valley Opportunity, 627 So. 2d 308, 1993 Miss. LEXIS 421 (Miss. 1993).

A claimant failed to make the requisite showing that her mental condition was causally connected to her employment where 2 doctors testified that the claimant had suffered from psychological disorders prior to the incident alleged to have caused her mental injury, the Workers' Compensation Commission found the testimony of another doctor, who diagnosed the claimant as having severe post-traumatic stress disorder and major depression with some psychotic symptoms, to be unconvincing, and the incident alleged to have caused the claimant's mental injury-a private meeting with her supervisor during which the supervisor threatened to fire her-was not an "untoward event." Bates v. Countrybrook Living Center, 609 So. 2d 1247, 1992 Miss. LEXIS 589 (Miss. 1992).

The evidence was sufficient to support the Workers' Compensation Commission's finding that a claimant's hypertension was work-related, thus obliging the claimant's former employer to pay for medical expenses incurred by the claimant for periodic checkups for his hypertensive condition as ordered by his treating physician, where the claimant began to experience tension, anxiety and stomach problems, which the physician diagnosed as hypertension, during the time the claimant worked for the employer, and the physician concluded that the claimant's job caused him to experience significant stress which aggravated his hypertensive condition so as to require him to take a medical leave of absence. Berry v. Universal Mfg. Co., 597 So. 2d 623, 1992 Miss. LEXIS 151 (Miss. 1992).

The evidence was sufficient to support the Workers' Compensation Commission's finding that an employee's mental disability was caused by a deliberate course of conduct by his employer and that there was nothing in his psychological background to suggest a pre-existing personality disorder, so that the stresses to which the employee was subjected were "more than the ordinary incidents of employment" and were "untoward events or unusual occurrences" culminating in his subsequent disability, where a psychiatrist who treated the employee for over 2 years testified that the employee was psychologically disabled and that his work played a significant part in causing it, and testimony from the employee, the employee's wife, and fellow employees established a protracted pattern by the employer to put pressure and stress upon the employee. Borden, Inc. v. Eskridge, 604 So. 2d 1071, 1991 Miss. LEXIS 795 (Miss. 1991).

A doctor's inability to pinpoint the exact physical cause of an employee's disability did not alone defeat the employee's claim for compensation, given the beneficent purpose of the Workers' Compensation Act, where there was uncontradicted testimony that the employee was injured while performing his job and that he was totally and permanently disabled. Trest v. B.C. Rogers Processors, Inc., 592 So. 2d 110, 1991 Miss. LEXIS 981 (Miss. 1991).

The evidence was sufficient to support a finding by the Workers' Compensation Commission that noise at an employee's work site was a contributing, precipitating, or aggravating factor in the production of Meniere's Syndrome, even though the etiology of Meniere's Syndrome is largely unknown, where there was substantial evidence that exposure to high intensity noise for a period of years at the work site contributed to, aggravated or accelerated the employee's condition, and this evidence was not controverted by any direct medical evidence. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250, 1991 Miss. LEXIS 763 (Miss. 1991).

The injury arises out of and in the course the employment if the employment aggravates, accelerates, or contributes to the disability as opposed to being the sole or principal cause. Fought v. Stuart C. Irby Co., 523 So. 2d 314, 1988 Miss. LEXIS 86 (Miss. 1988).

As general rule employer is not liable for acts of employees going to and returning from work; employer is not liable for act of employee while employee is driving home from work where employee was not being paid hourly wage at time of accident and was not on special mission and was not engaged in furtherance of employer's work even though employee was compensated $6 per day for travel expenses. Smith v. Anderson-Tulley Co., 608 F. Supp. 1143, 1985 U.S. Dist. LEXIS 19919 (S.D. Miss. 1985), aff'd, 846 F.2d 751, 1988 U.S. App. LEXIS 5962 (5th Cir. Miss. 1988).

Mere fact that employee obtains worker's compensation benefits from accident is insufficient to show that employee was acting within scope of employment at time of accident, thereby subjecting employer to vicarious liability. Smith v. Anderson-Tulley Co., 608 F. Supp. 1143, 1985 U.S. Dist. LEXIS 19919 (S.D. Miss. 1985), aff'd, 846 F.2d 751, 1988 U.S. App. LEXIS 5962 (5th Cir. Miss. 1988).

When an employee is found dead at a place where his duties required him to be or where he might properly have been in performing his duties during the hours of his work, there is a presumption of causal connection between the injury or death and the employment. Leake County Cooperative v. Dependents of Barrett, 226 So. 2d 608, 1969 Miss. LEXIS 1306, 1969 Miss. LEXIS 1307 (Miss. 1969).

In view of the 1960 amendment imposing on the court the duty of fairly construing the Workmen's Compensation Law according to the law and evidence, reversal was required where the workmen's compensation commission's and circuit court's order denying compensation and medical benefits on the ground that there was no causal connection between the decedent's employment duties and the rupture of the aneurysm causing his death was not supported by substantial evidence. Dependent of Payton v. Armstrong Tire & Rubber Co., 250 Miss. 407, 165 So. 2d 336, 1964 Miss. LEXIS 471 (Miss. 1964).

The test of recovery under Workmen's Compensation Law is not a causal relation between the nature of employment of the injured person and the accident, nor is it necessary that the employee be engaged at the time of the injury in activity of benefit to his employer, and all that is required is that the obligations or conditions of employment create a zone of special danger out of which the injury arose. Brookhaven Steam Laundry v. Watts, 214 Miss. 569, 55 So. 2d 381, 1951 Miss. LEXIS 521 (Miss. 1951).

5. —Status of employee.

An employer's workers' compensation carrier would be liable for the injuries of an employee who was injured while changing a neighboring business' outdoor advertising sign where the employer had a policy of goodwill toward its business neighbors, which included changing the sign for the neighboring business, and the employees were expected to help foster the goodwill policy; since the employee acted in conformity with his employer's dictates, he acted in the course and scope of his employment, and was not a loaned servant to the neighboring business. Quick Change Oil & Lube v. Rogers, 663 So. 2d 585, 1995 Miss. LEXIS 582 (Miss. 1995).

A defendant who has successfully defended an action for personal injuries resulting from a beating the plaintiff received from defendant's foreman, on the ground that the relationship of employer-employee existed between defendant and plaintiff, cannot thereafter challenge the applicability of the Workmen's Compensation Law to the plaintiff's claim; provided claim for benefits is timely filed within the time extended by Code 1942, § 6998-18(c) beginning with the date of the order dismissing plaintiff's appeal. Seal v. Industrial Electric, Inc., 395 F.2d 214, 1968 U.S. App. LEXIS 6987 (5th Cir. Miss. 1968).

Liability under Workmen's Compensation Law is not to be adjudged by the common law principles wherein negligence or wrongful act is a controlling factor, but yet the status of the employee as such at the time of the injury may be revealed from decisions which have supplied helpful analogies. Barry v. Sanders Co., 211 Miss. 656, 52 So. 2d 493, 1951 Miss. LEXIS 396 (Miss. 1951).

6. —Out-of-state claims.

An award of workmen's compensation in another state will not bar a claim in Mississippi unless the act under which the award is made provides that it shall be exclusive, where the prior award is credited on the second award. Harrison Co. v. Norton, 244 Miss. 752, 146 So. 2d 327, 1962 Miss. LEXIS 504 (Miss. 1962).

7. —Exclusiveness of remedy.

Given the considerable amount of testimony offered by the employees and the management personnel regarding the employer's refusal to install an appropriate ventilation system on the glue line despite its knowledge of the harmful effects of the neurotoxin contained in the adhesive the intentional tort exception under Miss. Code Ann. § 71-3-9 to the Mississippi Workers' Compensation Act. Miss. Code Ann. §§ 71-3-1 et seq., clearly applied. Franklin Corp. v. Tedford, 18 So. 3d 215, 2009 Miss. LEXIS 426 (Miss. 2009).

In a Title VII racial discrimination case in which an employee's claim for negligent infliction of emotional distress was not barred by the three-year limitation period in Miss. Code Ann. § 15-1-49, the claim nonetheless failed since a claim for negligent infliction of emotional distress did not arise from acts of intentional discrimination. Furthermore, any state tort claim grounded in negligence asserted by the employee would be barred by the exclusive remedy provision of the Mississippi Workers' Compensation Law. Fortenberry v. Gulf Coast Cmty. Action Agency, Inc., 2007 U.S. Dist. LEXIS 89831 (S.D. Miss. Dec. 5, 2007).

Company hired to complete specific drilling project for worker's employer was independent contractor and, thus, was not immune from negligence suit under exclusive remedy provision of workers' compensation law as company was sufficiently outside of employer's right to control to assume responsibility for torts of employees. Luther McGill, Inc. v. Bradley, 674 So. 2d 11, 1996 Miss. LEXIS 210 (Miss. 1996).

The existence of a contract for indemnity changes the applicability of the exclusivity provision of the Workers' Compensation Act; the enforcement of an indemnity clause which was freely entered into does not impugn the beneficent purposes of the Act because the employee will still be compensated. Heritage Cablevision v. New Albany Elec. Power Sys., 646 So. 2d 1305, 1994 Miss. LEXIS 599 (Miss. 1994).

A pipeline operator which contracted with an injured welder's employer for the construction of a pipeline was not immune from tort liability on the ground of the "statutory employer" defense; since the pipeline operator was not a "contractor," and because the employer had secured compensation for the welder's benefit, the Workers' Compensation Act imposed no duty on the pipeline operator and, accordingly, the pipeline operator enjoyed no benefits under the Act. The pipeline operator could not gain tort immunity by assuming compensation obligations which in fact and in law it did not have. Magee v. Transcontinental Gas Pipe Line Corp., 551 So. 2d 182, 1989 Miss. LEXIS 365 (Miss. 1989).

Exception to exclusivity of Workers Compensation Act remedy has been held to exist in actions by injured employees against carriers for independent intentional torts, but in those cases alleged tortious conduct occurred independent of and subsequent to workplace injury. Stevens v. FMC Corp., 515 So. 2d 928, 1987 Miss. LEXIS 2883 (Miss. 1987).

Negligence action by employee of drilling company who was injured when part of drilling rig fell on him, against company which transported rig to drilling site, is precluded by exclusive remedy provision of Mississippi Workers' Compensation Act (§§ 71-3-1 et seq.), since transport company employees were "loaned servants" of drilling company, and since any negligence attributable to transport company employees occurred while they were under supervision of drilling company. Taylor v. Kay Lease Service, Inc., 761 F.2d 1107, 1985 U.S. App. LEXIS 30089 (5th Cir. Miss. 1985).

An employee did not have the common law right to sue a fellow employee who allegedly shot him where, on the occasion at issue, both were acting within the scope of and in the furtherance of their duties as employees and were therefore covered by the state workmen's compensation law. Kipnis v. Antoine, 472 F. Supp. 215, 1979 U.S. Dist. LEXIS 13402 (N.D. Miss. 1979).

Where the employer secured the payment of compensation to his employees by qualifying as a self-insurer, the remedy of an employee arises only under the Workmen's Compensation Law, and that statutory remedy being exclusive, no action at law is available to the employee. Taylor v. Crosby Forest Products Co., 198 So. 2d 809, 1967 Miss. LEXIS 1271 (Miss. 1967).

In an action for damages brought by an employee against his employer resulting from a beating perpetrated by his foreman, the employer who alleged that the exclusive remedy was under the workmen's compensation statutes was required to assert as an affirmative defense that the assault upon the employee was one which arose out of the scope and course of his employment. Seal v. Industrial Electric, Inc., 362 F.2d 788, 1966 U.S. App. LEXIS 5710 (5th Cir. Miss. 1966).

8. —Conflicting evidence.

Where there was conflicting medical evidence regarding a claimant's lumbar condition and her need for lumbar spine injury, an appellate court could not say that the Workers' Compensation Commission's decision to deny benefits was arbitrary and capricious. Washington v. Woodland Vill. Nursing Home, 25 So. 3d 341, 2009 Miss. App. LEXIS 108 (Miss. Ct. App. 2009), cert. denied, 24 So. 3d 1038, 2010 Miss. LEXIS 2 (Miss. 2010).

Employee's injury was compensable under the Workers' Compensation Act because the Act was to be construed liberally in favor of claimants and because there was no doubt that a doctor's expert medical opinion supported the Workers' Compensation Commission's decision regarding the employee's injury; while there was a conflict in expert medical opinion, the appellate court was not permitted to resolve conflicts in the evidence based on its mandated presumption that the commission resolved all such conflicts. Union Camp Corp. v. Hall, 955 So. 2d 363, 2006 Miss. App. LEXIS 696 (Miss. Ct. App. 2006), cert. dismissed, 956 So. 2d 228, 2007 Miss. LEXIS 215 (Miss. 2007).

A finding that a claimant was not entitled to permanent disability benefits because his disability, which arose from slippage in the spine, was attributable entirely to preexisting spondylolisthesis was not supported by substantial evidence where there was conflicting medical testimony from 2 treating physicians as to the cause of the claimant's permanent disability and neither physician could determine how and when the slippage actually occurred, since close questions of compensability should be resolved in favor of the claimant, and the Workers' Compensation Act should be liberally construed to carry out its remedial purpose. McNeese v. Cooper Tire & Rubber Co., 627 So. 2d 321, 1993 Miss. LEXIS 444 (Miss. 1993).

Employee's injury was compensable under the Workers' Compensation Act because the Act was to be construed liberally in favor of claimants and because there was no doubt that a doctor's expert medical opinion supported the Workers' Compensation Commission's decision regarding the employee's injury; while there was a conflict in expert medical opinion, the appellate court was not permitted to resolve conflicts in the evidence based on its mandated presumption that the commission resolved all such conflicts. Union Camp Corp. v. Hall, 955 So. 2d 363, 2006 Miss. App. LEXIS 696 (Miss. Ct. App. 2006), cert. dismissed, 956 So. 2d 228, 2007 Miss. LEXIS 215 (Miss. 2007).

There was substantial evidence in a physician's testimony to support the Workers' Compensation Commission's determination as to the date a claimant reached maximum medical recovery, and therefore the circuit court erred in finding a different date based on the opinion of another physician. Jordan v. Hercules, Inc., 600 So. 2d 179, 1992 Miss. LEXIS 224 (Miss. 1992), but see Dulaney v. National Pizza Co., 733 So. 2d 301, 1998 Miss. App. LEXIS 990 (Miss. Ct. App. 1998).

Where the medical evidence in a heart case is conflicting, the court will affirm the commission whether the award is for or against the claimant. Kersh v. Greenville Sheet Metal Works, 192 So. 2d 266, 1966 Miss. LEXIS 1239 (Miss. 1966).

9. Relationship with other laws or claims.

For exhaustion of remedies purposes, a final order was not entered until an administrative law judge made a full resolution of a final decision because the parties in a worker's compensation dispute had reserved the issue of temporary and permanent disability for a hearing on the merits. Bullock v. AIU Ins. Co., 2008 Miss. LEXIS 221 (Miss. May 8, 2008).

Claim decided adversely to asbestosis claimant under the Longshoremen's and Harbor Workers' Compensation Act was res judicata on claim under Mississippi Workers' Compensation, as every factual issue under the Mississippi Act, including the issue of notice to the employer, was litigated and decided adversely to claimant in the Longshoremen's Act proceedings. Ingalls Shipbuilding Div., Litton Systems, Inc. v. Parson, 495 So. 2d 461, 1986 Miss. LEXIS 2663 (Miss. 1986).

Employee's receipt of benefits under Federal Employee's Compensation Act (5 USCS §§ 8101 et seq.) bars action against co-employee since Federal Government and its agencies are not excluded from coverage of provisions of Mississippi Worker's Compensation Act. Wilkins v. Swift, 616 F. Supp. 123, 1985 U.S. Dist. LEXIS 20962 (N.D. Miss. 1985).

In an action by an employee for actual and punitive damages against an employer on the ground that the employee had been discharged when he refused to drop a workman's compensation claim against the employer, the trial court properly sustained the employer's demurrer where there is no provision in the Mississippi Workman's Compensation Law for relief in cases of retaliatory discharge and where such an exception to the common law rule that a contract of employment for an indefinite term may be terminated at the will of either party rests solely within the power of the Legislature and should not be undertaken by the judiciary. Kelly v. Mississippi Valley Gas Co., 397 So. 2d 874, 1981 Miss. LEXIS 1913 (Miss. 1981).

The filing of a claim under the Mississippi Workmen's Compensation Act tolls the Longshoreman's and Harbor Workers' Compensation Act one-year statute of limitations. Ingalls Shipbuilding Div., Litton Systems, Inc. v. Hollinhead, 571 F.2d 272, 1978 U.S. App. LEXIS 11684 (5th Cir. 1978).

10. Course of employment.

Employer did not show the found-dead

presumption presuming a worker found dead at the worker's place of employment died in the course of the employment was no longer the law because (1) the presumption had not been statutorily eliminated, and (2) the presumption remained codified within the definition of what constitutes an injury. Baptist Mem. Hospital-North Miss. Inc. v. Slate, 282 So. 3d 1211, 2019 Miss. App. LEXIS 483 (Miss. Ct. App. 2019).

Employee was not entitled to workers' compensation benefits for injuries arising out of an accident that occurred during her lunch hour while the employee was crossing a public street because the employee was not a traveling employee, the personal comfort doctrine was not applicable, and the threshold doctrine was not applicable. The employee's injuries did not take place during the course of her employment. Bouldin v. Miss. Dep't of Health, 1 So. 3d 890, 2008 Miss. App. LEXIS 437 (Miss. Ct. App. 2008), cert. denied, 999 So. 2d 1280, 2009 Miss. LEXIS 11 (Miss. 2009).

Mississippi Supreme Court's line of cases, following *Mutual Implement & Hardware Insurance Co. v. Pittman, 59 So. 2d 547* , beginning shortly after enactment of the Mississippi Workers' Compensation Act (MWCA), Miss. Code Ann. § 71-3-1 et seq., in 1942, implicitly relied on a presumption that willful assaults by co-workers were accidental. In Pittman, the court held such attacks to be risks incident to employment of many persons and therefore compensable under the MWCA, and in Pittman and later cases, the Mississippi court focused on whether an assault arose "out of and in the course of employment" rather than focusing on the intent of the assailant. Tanks v. Lockheed Martin Corp, 417 F.3d 456, 2005 U.S. App. LEXIS 14539 (5th Cir. Miss. 2005).

11. Temporary total disability.

Temporary total disability award for six weeks and permanent partial disability award for 50 weeks and a finding that an employee reached maximum medical improvement on April 2, 1998, under Miss. Code Ann. § 71-3-1, based upon the testimony of a hand specialist and his release of the claimant the next day to return to work, even though he continued to treat the claimant, was proper. Allegrezza v. Greenville Mfg. Co., 122 So. 3d 755, 2012 Miss. App. LEXIS 594 (Miss. Ct. App. 2012), aff'd, 122 So. 3d 719, 2013 Miss. LEXIS 474 (Miss. 2013).

Mississippi Workers' Compensation Commission properly found that a claimant was not permanently and totally disabled due to a back injury as the plant had been closed for years before the hearing, and a physical therapist testified that with proper safety techniques, the claimant could perform all aspects of the job assigned to her by the employer. Allegrezza v. Greenville Mfg. Co., 122 So. 3d 755, 2012 Miss. App. LEXIS 594 (Miss. Ct. App. 2012), aff'd, 122 So. 3d 719, 2013 Miss. LEXIS 474 (Miss. 2013).

OPINIONS OF THE ATTORNEY GENERAL

Under Miss. Code Ann. § 21-19-25, a municipality may require proof of general liability insurance and workers' compensation coverage when required by Miss. Code Ann. § 71-3-1 et seq., as conditions for the issuance of a municipal building permit. Hedglin, March 23, 2007, A.G. Op. #07-00133, 2007 Miss. AG LEXIS 119.

RESEARCH REFERENCES

ALR.

Constitutional or statutory provision referring to "employees" as including public officers. 5 A.L.R.2d 415.

Application for, or award, denial, or acceptance of, compensation under state workmen's compensation act as precluding action under Federal Employers' Liability Act by one engaged in interstate commerce within that act. 6 A.L.R.2d 581.

Homeowners' or personal liability insurance as providing coverage for liability under workmen's compensation laws. 41 A.L.R.3d 1306.

Workmen's compensation provision as precluding employee's action against employer for fraud, false imprisonment, defamation, or the like. 46 A.L.R.3d 1279.

Workmen's compensation: injury sustained while attending employer-sponsored social affair as arising out of and in the course of employment. 47 A.L.R.3d 566.

Mental disorders as compensable under workmen's compensation acts. 97 A.L.R.3d 161.

Workers' compensation immunity as extending to one owning controlling interest in employer corporation. 30 A.L.R.4th 948.

Recovery for discharge from employment in retaliation for filing workers' compensation claim. 32 A.L.R.4th 1221.

Workers' compensation: injuries incurred during labor activity. 61 A.L.R.4th 196.

Workers' compensation: value of home services provided by victim's relative. 65 A.L.R.4th 142.

"Dual Capacity Doctrine" as basis for employee's recovery for medical malpractice from company medical personnel. 73 A.L.R.4th 115.

Validity, construction, and effect of statutory exemptions of proceeds of workers' compensation awards. 48 A.L.R.5th 473.

Workers' compensation as precluding employee's suit against employer for sexual harassment in the workplace. 51 A.L.R.5th 163.

Right to workers' compensation for emotional distress or like injury suffered as result of sudden stimuli involving nonpersonnel action. 83 A.L.R.5th 103.

Am. Jur.

82 Am. Jur. 2d, Workers' Compensation § 2.

24 Am. Jur. Proof of Facts 2d 439, "Casual Worker" Under Workers' Compensation Act.

48 Am. Jur. Proof of Facts 2d 1, Worker's Compensation – Employer's Intentional Misconduct.

50 Am. Jur. Proof of Facts 2d 187, Discharge from Employment in Retaliation for Filing Worker's Compensation Claim.

CJS.

99 C.J.S., Workers' Compensation § 11-19.

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1981 Mississippi Supreme Court Review: Administrative Law. 52 Miss. L. J. 377, June 1982.

1984 Mississippi Supreme Court Review: Administrative Law. 55 Miss. L. J. 25.

Practice References.

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§ 71-3-3. Definitions.

Unless the context otherwise requires, the definitions which follow govern the construction and meaning of the terms used in this chapter:

(a) "Person" includes an individual, firm, voluntary association or a corporation.

(b) "Injury" means accidental injury or accidental death arising out of and in the course of employment without regard to fault which results from an untoward event or events, if contributed to or aggravated or accelerated by the employment in a significant manner. Untoward event includes events causing unexpected results. An untoward event or events shall not be presumed to have arisen out of and in the course of employment, except in the case of an employee found dead in the course of employment. This definition includes injuries to artificial members, and also includes an injury caused by the willful act of a third person directed against an employee because of his employment while so employed and working on the job, and disability or death due to exposure to ionizing radiation from any process in employment involving the use of or direct contact with radium or radioactive substances with the use of or direct exposure to roentgen (X-rays) or ionizing radiation. In radiation cases only, the date of disablement shall be treated as the date of the accident. Occupational diseases, or the aggravation thereof, are excluded from the term "injury," provided that, except as otherwise specified, all provisions of this chapter apply equally to occupational diseases as well as injury.

(c) "Death," when mentioned as a basis for the right to compensation, means only death resulting from such an injury.

(d) "Employee" means any person, including a minor whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, written or oral, express or implied, provided that there shall be excluded therefrom all independent contractors and especially any individual performing service in, and at the time of, the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by the individual at a fixed price, the individual's compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to the individual, whether or not the individual is guaranteed a minimum amount of compensation for such service or is entitled to be credited with the unsold newspapers or magazines returned. A student of an educational institution who, as a part of such educational institution's curriculum, is receiving practical training at any facility, who is under the active and direct supervision of the personnel of the facility and/or an instructor of the educational institution, and who is not receiving wages as a consequence of participation in such practical training shall not be considered an employee of such facility on account of participation in such practical training.

(e) "Employer," except when otherwise expressly stated, includes a person, partnership, association, corporation and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation.

(f) "Carrier" means any person authorized in accordance with the provisions of this chapter to insure under this chapter and includes self-insurers.

(g) "Self-insurer" is an employer who has been authorized under the provisions of this chapter to carry his own liability on his covered employees without insuring in a stock or mutual carrier.

(h) "Commission" means the Workers' Compensation Commission.

(i) "Disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or other employment, which incapacity and the extent thereof must be supported by medical findings.

(j) "Compensation" means the money allowance payable to an injured worker or his dependents as provided in this chapter, and includes funeral benefits provided therein.

(k) "Wages" includes the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of injury, and also the reasonable value of board, rent, housing, lodging or similar advantage received from the employer and gratuities received in the course of employment from others than the employer. The term "wages" shall not include practical training received by students of an educational institution as a part of such educational institution's curriculum.

(*l*) "Child" shall include a posthumous child, a child legally adopted prior to the injury of the employee, a child in relation to whom the deceased employee stood in the place of a parent for at least one (1) year prior to the time of injury and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent on him. "Grandchild" means a child as above defined of a child as above defined. "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. "Child," "grandchild," "brother" and "sister" include only persons who are under eighteen (18) years of age, and also persons who, though eighteen (18) years of age or over, are wholly dependent upon the deceased employee and incapable of self-support by reason of mental or physical disability, and also a child eighteen (18) years of age or older, until his twenty-third birthday, who is dependent upon the deceased and is pursuing a full-time education.

(m) "Parent" includes stepparents and parents by adoption, parents-in-law or any person who for more than three (3) years prior to the death of the deceased employee stood in the place of a parent to him, or her, if dependent on the injured employee.

(n) The term "surviving spouse" includes the decedent's legal wife or husband, living with him or her or dependent for support upon him or her at the time of death or living apart for justifiable cause or by reason of desertion at such time, provided, however, such separation had not existed for more than three (3) years without an award for separate maintenance or alimony or the filing of a suit for separate maintenance or alimony in the proper court in this state. The term "surviving spouse" shall likewise include one not a legal wife or husband but who had entered into a ceremonial marriage with the decedent at least one (1) year prior to death and who, on the date of the decedent's death, stood in the relationship of a wife or husband, provided there was no living legal spouse who had protected her or his rights for support by affirmative action as hereinabove required. The term "surviving spouse" as contemplated in this chapter shall not apply to any person who has, since his or her separation from decedent, entered into a ceremonial marriage or lived in open adultery with another.

(o) The term "adoption" or "adopted" means legal adoption prior to the time of the injury.

(p) The singular includes the plural and the masculine includes the feminine and neuter.

(q) It is expressly provided, agreed and understood in determining beneficiaries under this section that a surviving spouse suffering a mental or physical handicap and children under the age of eighteen (18) years are presumed to be dependent.

(r) "Independent contractor" means any individual, firm or corporation who contracts to do a piece of work according to his own methods without being subject to the control of his employer except as to the results of the work, and who has the right to employ and direct the outcome of the workers independent of the employer and free from any superior authority in the employer to say how the specified work shall be done or what the laborers shall do as the work progresses, one who undertakes to produce a given result without being in any way controlled as to the methods by which he attains the result.

(s) "Average weekly wage for the state" means an amount determined by the commission as of October 1 of each year based upon wage and employment statistics reported to the commission by the Mississippi Employment Security Commission. Such amount shall be based upon data for the preceding twelve-month period and shall be effective from and after January 1 of the following year.

HISTORY: Codes, 1942, § 6998-02; Laws, 1948, ch. 354, § 2; Laws, 1950, ch. 412, § 1; Laws, 1956, ch. 344; Laws, 1960, ch. 276; Laws, 1962, ch. 473; Laws, 1968, ch. 559, § 2; Laws, 1980, ch. 475, § 1; reenacted, Laws, 1982, ch. 473, § 2; Laws, 1984, ch. 499, § 1; Laws, 1988, ch. 446, § 1; reenacted without change, Laws, 1990, ch. 405, § 2; Laws, 1991, ch. 495, § 1, eff from and after July 1, 1991.

Editor's Notes — Laws of 1988, ch. 446, § 6, provides as follows:

"SECTION 6. This act shall take effect and be in force from and after July 1, 1988; provided, however, the increase in benefits allowed under this act shall apply only to claims arising on or after July 1, 1988."

Section 71-5-101 provides that wherever the term "Employment Security Commission" appears in any law it shall mean the "Mississippi Department of Employment Services."

Cross References — Application of chapter where there is no employer-employee relationship as defined in this section, see § 71-3-5.

Application of this section to the definition of "compensation," see § 71-3-157.

JUDICIAL DECISIONS

ANALYSIS

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1. In general.

Substantial evidence supported the finding of the Mississippi Worker's Compensation Commission that the employee, a 61-year-old heavy equipment operator, was permanently and totally disabled due to spinal stenosis and related complications. While the medical evidence was in dispute as to whether he had suffered a total or partial permanent injury, it was a dispute to be resolved by the Commission; the Commission chose to credit a primary treating physician's assessment that the employee could not hold any type job, and that assessment was corroborated by the employee's testimony as well as the employer's statement to the Mississippi Public Employees Retirement System that the employee was totally disabled. Pike County Bd. of Supervisors v. Varnado, 912 So. 2d 477, 2005 Miss. App. LEXIS 233 (Miss. Ct. App.), cert. denied, 921 So. 2d 344, 2005 Miss. LEXIS 668 (Miss. 2005).

The 1960 amendment to this statute has no bearing upon the right to compensation for an injury sustained prior to its enactment. International Paper Co. v. Wilson, 243 Miss. 659, 139 So. 2d 644, 1962 Miss. LEXIS 391 (Miss. 1962).

2. Compensation.

Workers' Compensation Commission properly affirmed the administrative judge's award of benefits of a longtime employee because it was sufficient that she suffered an injury—a display at the end of an aisle fell on her causing continued pain in her back, neck, left shoulder, and left arm, and she was only able to work with accommodations—the injury resulted in a loss of wage-earning capacity, and substantial evidence supported the AJ's findings of loss of wage-earning capacity and that the employee's job search was adequate and not a "mere" sham. Walmart Assocs. v. Cauley, — So. 3d —, 2021 Miss. App. LEXIS 254 (Miss. Ct. App. June 15, 2021).

Where claimant suffered a single injury in 1981 and the injury gradually worsened and progressed to a permanent injury which manifested itself as a total disability in July 1993, the rate of compensation should be based on Johnson's salary and/or wages for July 1993. J. H. Moon & Sons, Inc. v. Johnson, 753 So. 2d 445, 1999 Miss. LEXIS 383 (Miss. 1999).

Both the 10 percent penalty imposed for failure to pay an installment of compensation payable without an award within 14 days after it becomes due, and the 20 percent penalty for failure to pay an installment payable under the terms of an award within 14 days after it becomes due, could be imposed upon the same installments of compensation, so that when an employer failed to pay a judgment within 14 days after the award became final, the 20 percent penalty applied to the judgment, which consisted of vested installments together with interest and the 10 percent penalty, as well as to installments due after the award. Delchamps, Inc. v. Baygents, 578 So. 2d 620, 1991 Miss. LEXIS 189 (Miss. 1991).

Compensation may be allowed for disabling pain in the absence of positive medical testimony as to any physical cause whatever. When the patient complains of pain, the doctor usually takes the fact of pain for granted and the absence of physical findings to account for the pain will not necessarily bar compensation. In such cases, evidence of an accident followed by disabling pain and the absence of evidence as to the cause of the pain from objective medical findings may be sufficient as a basis for compensation, in the absence of circumstances tending to show malingering or indicating that the claimant's testimony as to pain is inherently improbable, incredible, unreasonable or untrustworthy. However, there is a great potential for abuse in claims which are based predominantly upon pain reported by the patient, particularly in circumstances where the patient's testimony or statement to the physician is the sole evidence of its continued presence. In these cases, it would be prudent to obtain additional medical evidence to either support or dispute the claim. Morris v. Lansdell's Frame Co., 547 So. 2d 782, 1989 Miss. LEXIS 336 (Miss. 1989).

In work-connected injury cases where the evidence establishes (a) successive injuries experienced by the employee where following the first injury the employee engages in full-time employment for a substantial period of time prior to the second injury; or (b) a preexisting (symptomatic or asymptomatic) condition which causes the employee to experience no pre-injury occupational disability, apportionment may not be ordered. On the other hand, in cases where (a) there is evidence of a medically cognizable, identifiable, symptomatic condition which antedated the injury; and (b) the employee experienced some absence of normal (for him or her) wage earning capacity, then apportionment must be ordered. Stuart's, Inc. v. Brown, 543 So. 2d 649, 1989 Miss. LEXIS 220 (Miss. 1989).

The onset of an employee's essential tremors arose out of and in the course of employment where a cold tablet purchased from her employer exacerbated her pre-existing congenital condition and contributed to the onset of her essential tremor; the employer gained the benefits of lessening absenteeism due to illness by distributing the medication and, by memoranda, the employer suggested to its employees that they avail themselves of the medication provided at the employer's first-aid station. Quitman Knitting Mill v. Smith, 540 So. 2d 623, 1989 Miss. LEXIS 140 (Miss. 1989).

Compensation, as defined in subsection (10) of Code 1942, § 6998-02 [now subsection (j) of Code 1972, § 73-3-3 [Repealed]], includes money allowances paid to an injured worker or his dependents, and funeral benefits provided in the act, but does not include legal fees incurred by the insurer. Kidwell v. Gulf, M. & O. R. Co., 251 Miss. 152, 168 So. 2d 735, 1964 Miss. LEXIS 335 (Miss. 1964).

Payment of medical expenses is a part of and is equivalent to the payment of compensation. Graeber Bros., Inc. v. Taylor, 237 Miss. 691, 115 So. 2d 735, 1960 Miss. LEXIS 502 (Miss. 1960).

3. Death.

Worker's survivors were entitled to workers' compensation benefits because an employer did not rebut the statutory "found-dead" presumption that a worker found dead at the worker's place of employment died in the course of employment, as (1) no autopsy was performed, (2) testimony that the worker's job did not contribute to the death had no substantial basis, (3) the testimony of an expert who had never treated or met the worker was mere guesswork, and (4) there was no direct evidence of what happened to the worker on the day of the death. Baptist Mem. Hospital-North Miss. Inc. v. Slate, 282 So. 3d 1211, 2019 Miss. App. LEXIS 483 (Miss. Ct. App. 2019).

Employer did not show the found-dead presumption presuming a worker found dead at the worker's place of employment died in the course of the employment was no longer the law because (1) the presumption had not been statutorily eliminated, and (2) the presumption remained codified within the definition of what constitutes an injury. Baptist Mem. Hospital-North Miss. Inc. v. Slate, 282 So. 3d 1211, 2019 Miss. App. LEXIS 483 (Miss. Ct. App. 2019).

Mississippi Workers' Compensation Commission improperly applied the relevant law to the question of whether the death of a truck driver, who was shot and killed by a bar patron after both left a bar where the truck driver had been drinking for 11 hours, was "because of" his employment under Miss. Code Ann. § 71-3-3(b); his death was not a result of his employment and it was not compensable. Total Transp., Inc. v. Shores, 968 So. 2d 400, 2007 Miss. LEXIS 525 (Miss. 2007).

A circuit court judgment affirming the Workers' Compensation Commission's denial of benefits to a deceased employee's children was not supported by substantial evidence and would be reversed where the onset of the employee's death occurred at her place of employment and the employer failed to rebut the presumption that the employee's work activities did not cause or contribute to the condition from which she died; the unrebutted "found dead" legal presumption prevailed, satisfying the causal connection between the employee's work duties and the condition which resulted in her death. Nettles v. Gulf City Fisheries, 629 So. 2d 554, 1993 Miss. LEXIS 545 (Miss. 1993).

The Workers' Compensation Commission's apportionment of an award of death benefits by ⅔ on the basis of pre-existing health conditions was supported by substantial evidence where the worker, who died of a heart attack arising out of and in the course of his employment, had smoked 3 packs of cigarettes daily since his teenage years and consumed approximately "½ bottle of alcohol" daily for an unspecified number of years, and his family had a history of heart-related problems. Hardin's Bakeries v. Harrell, 566 So. 2d 1261, 1990 Miss. LEXIS 540 (Miss. 1990).

Since a claim for disability is separate and distinct from a claim for death benefits, the 1960 amendment to subsection (9) of Code 1942, § 6998-02 [now subsection (i) of Code 1972, § 71-3-3], requiring that incapacity and the extent thereof be supported by medical findings, did not eliminate the presumption of causal connection between the employment and death occurring while the employee is engaged in the duties of his employment, particularly since the 1960 amendment did not affect subsection (3) of Code 1942, § 6998-02 [now subsection (c) of Code 1972, § 71-3-3]. L. B. Priester & Son, Inc. v. Bynum, 244 Miss. 185, 137 So. 2d 907, 1962 Miss. LEXIS 438 (Miss. 1962).

4. Dependents, generally.

The term "dependent" must be liberally interpreted, and includes those partially dependent as well as those wholly dependent, and one is dependent if he relies upon the employee, in whole or in part, for his support. Mid-State Paving Co. v. Farthing, 233 Miss. 333, 101 So. 2d 850, 1958 Miss. LEXIS 386 (Miss. 1958).

In order to be a dependent, the claimant must show that he had reasonable grounds to anticipate future support from the deceased employee. Mid-State Paving Co. v. Farthing, 233 Miss. 333, 101 So. 2d 850, 1958 Miss. LEXIS 386 (Miss. 1958).

The provision of the Workmen's Compensation Law to the effect that questions of dependency shall be determined at the time of the injury has reference to the dependency which generates the original right to an award, and does not control the question of determination of a right to continue receiving an award. Franklin v. Jackson, 231 Miss. 497, 95 So. 2d 794, 1957 Miss. LEXIS 534 (Miss. 1957).

The word "dependent" as used in the Workmen's Compensation Law means a person who is dependent upon the employee, in whole or in part, for his support and relies on the same. Deemer Lumber Co. v. Hamilton, 211 Miss. 673, 52 So. 2d 634, 1951 Miss. LEXIS 398 (Miss. 1951).

The use of the words "wholly dependent" and "dependent" shows the legislative intent to make "dependent" mean something different from "wholly dependent." Deemer Lumber Co. v. Hamilton, 211 Miss. 673, 52 So. 2d 634, 1951 Miss. LEXIS 398 (Miss. 1951).

5. —Brothers and sisters.

Evidence that a deceased workman regularly provided groceries to his family and on several occasions clothing, mostly for his minor brothers, and that each month he did three or four days of extra work, paying all the money for this to the father of the deceased, that the father of the deceased was unable to work and received $58 per month in welfare payments, supported the commission's finding that the minor brothers had been partially dependent upon the deceased for their support and were entitled to workmen's compensation benefits after the deceased was killed in the course of his employment. United States Fidelity & Guaranty Co. v. Fortner, 234 So. 2d 636, 1970 Miss. LEXIS 1419 (Miss. 1970).

In the absence of proof that the deceased employee's brother, who was over 18 years of age at the time of employee's death, was wholly dependent upon employee and was incapable of self-support by reason of mental or physical disability, the award to him of compensation was erroneous. W. R. Fairchild Constr. Co. v. West, 202 So. 2d 643, 1967 Miss. LEXIS 1341 (Miss. 1967).

Evidence that deceased employee had furnished money and supplies for the support of his two minor brothers and of his father who was in poor health and had not been gainfully employed during the two years next prior to his death sustained the commission's finding that the father and the minor brothers were totally dependent upon the deceased at the time of his death. Truck Trailer Sales & Service Co. v. Moore, 244 Miss. 317, 141 So. 2d 541, 1962 Miss. LEXIS 451 (Miss. 1962).

A brother who by reason of low intelligence and the loss of an arm is incapable of holding a job, and who received from the deceased employee regular monthly sums without which he would have been destitute, may properly be found to have been entirely dependent upon him, though he earned a little money by sweeping a church, and received occasional small gifts of money from another brother, who also paid a hospital bill. Ross v. Ross, 240 Miss. 84, 126 So. 2d 512, 1961 Miss. LEXIS 434 (Miss. 1961).

6. —Children, generally.

Workers' Compensation Commission's decision that the child was not a dependent of the decedent and thus not entitled to an award of death benefits was supported by substantial evidence; because of the child's age (26-years old) and marital status (married), an award of death benefits to her would not be proper unless she was wholly dependent on the decedent, and given the myriad income sources available to and used by the child, the appellate court could hardly view the receipt of such income as sporadic or insubstantial. Descendants of Gilmer v. Nolen Sistrunk Trucking, Inc., 892 So. 2d 825, 2004 Miss. App. LEXIS 867 (Miss. Ct. App. 2004), cert. denied, 893 So. 2d 1061, 2005 Miss. LEXIS 80 (Miss. 2005).

In interpreting meaning of word "children" under Federal Employers Liability Act, provisions of Mississippi Workers' Compensation Act do not apply; even if Workers' Compensation Act provisions did apply, it would not help child where there was no proof that she was dependent on deceased at time of his death, or that claim on decedent for support had ever been made, because section specifically states that acknowledged illegitimate child, dependent on decedent, may recover. Ivy v. Illinois C. G. R. Co., 510 So. 2d 520, 1987 Miss. LEXIS 2619 (Miss. 1987).

Grandchild to whom deceased stood in place of parent for at least one year prior to injury elevated to child status, where uncontroverted evidence showed that decedent had stood in place of granddaughter's father all of her life, and she called him "U.S. Rubber Reclaiming Co. v. Dependents of Stampley, 508 So. 2d 673, 1987 Miss. LEXIS 2599 (Miss. 1987).

Under Miss Code 1972 §§ 71-3-3 & 71-3-25, which define a "child" and "grandchild" and prescribe different workmen's compensation benefits for each, two minor natural grandchildren, with whom the Commission found that decedent stood in loco parentis for at least one year prior to the time of his injury and death, would be elevated to the status of children for workmen's compensation benefit purposes. Longleaf Forest Products, Inc. v. Hopkins, 349 So. 2d 523, 1977 Miss. LEXIS 2150 (Miss. 1977).

A child who from the time of her adoption never resided with her natural father but remained in the care, custody, and control, and under the supervision of the mother and adoptive father, cannot be considered as a dependent of the natural father for purposes of the Workmen's Compensation Law. W. R. Fairchild Constr. Co. v. Owens, 224 So. 2d 571, 1969 Miss. LEXIS 1295 (Miss. 1969).

Dependency at time of parent's injury does not entitle minor daughter to death benefit where she married prior to the parent's death. Futorian-Stratford Furniture Co. v. Dependents of Oswalt, 249 Miss. 35, 162 So. 2d 645, 1964 Miss. LEXIS 373 (Miss. 1964).

A married daughter, living apart from her husband and with deceased at the time of his death, who was over the age of 18 years, was not wholly dependent upon the deceased, and not incapable of self support by reasons of mental or physical disability, was precluded from the allowance of any benefits for the death of her father. Thrash v. Jackson Auto Sales, Inc., 232 Miss. 845, 100 So. 2d 574, 1958 Miss. LEXIS 338 (Miss. 1958).

Since one of the primary purposes of the Workmen's Compensation Law is to relieve society of the burden of supporting helpless children in orphanages and public almshouses, it would be inconsistent to allow children over the ages of 18 years, who are physically and mentally able to support themselves, to receive compensation and to plead the award to the detriment of younger children who, because of age, are unable to support themselves. Franklin v. Jackson, 231 Miss. 497, 95 So. 2d 794, 1957 Miss. LEXIS 534 (Miss. 1957).

Even though a child qualifies as a dependent as of the time of injury because he is then under 18 years of age, he ceases to be a child within the meaning of the Workmen's Compensation Law when he reaches the age of 18 years unless he is incapable of self-support by reason of mental or physical disability. Franklin v. Jackson, 231 Miss. 497, 95 So. 2d 794, 1957 Miss. LEXIS 534 (Miss. 1957).

Where it appeared that the 34-year-old feeble-minded daughter of a deceased employee was not wholly dependent upon her father for support at the time of and shortly prior to his death and had been supported primarily during most of her life by someone else, the daughter's claim was not compensable. Aultman v. Crosby Chemicals, Inc., 222 Miss. 98, 75 So. 2d 458, 1954 Miss. LEXIS 626 (Miss. 1954).

Where a daughter of deceased employee, who was under 18 at the time of his death, married a month after his death and was supported by her husband afterwards, the compensation to the daughter would not be terminated as of the date of her marriage. Anderson-Tully Co. v. Wilson, 221 Miss. 656, 74 So. 2d 735, 1954 Miss. LEXIS 573 (Miss. 1954).

7. — —Adopted children.

A child who from the time of her adoption never resided with her natural father but remained in the care, custody, and control, and under the supervision of the mother and adoptive father, cannot be considered as a dependent of the natural father for purposes of the Workmen's Compensation Law. W. R. Fairchild Constr. Co. v. Owens, 224 So. 2d 571, 1969 Miss. LEXIS 1295 (Miss. 1969).

8. — —Grandchildren.

Grant of summary judgment in favor of the grandparents was proper where they were not vicariously liable and did not negligently supervise their grandchild when he was driving the grandfather's vehicle with a learner's permit and struck another driver because the mission of the trip was not for the mutual benefit of both the occupants; therefore, it could not be held that the grandparents had a master/servant relationship with their grandchild created by a joint venture. Warren v. Glascoe, 852 So. 2d 634, 2003 Miss. App. LEXIS 68 (Miss. Ct. App. 2003), aff'd, 880 So. 2d 1034, 2004 Miss. LEXIS 784 (Miss. 2004).

Grandchild to whom deceased stood in place of parent for at least one year prior to injury elevated to child status, where uncontroverted evidence showed that decedent had stood in place of granddaughter's father all of her life, and she called him "U.S. Rubber Reclaiming Co. v. Dependents of Stampley, 508 So. 2d 673, 1987 Miss. LEXIS 2599 (Miss. 1987).

Under Miss Code 1972 §§ 71-3-3 & 71-3-25, which define a "child" and "grandchild" and prescribe different workmen's compensation benefits for each, two minor natural grandchildren, with whom the Commission found that decedent stood in loco parentis for at least one year prior to the time of his injury and death, would be elevated to the status of children for workmen's compensation benefit purposes. Longleaf Forest Products, Inc. v. Hopkins, 349 So. 2d 523, 1977 Miss. LEXIS 2150 (Miss. 1977).

9. — —Illegitimate children.

In interpreting meaning of word "children" under Federal Employers Liability Act, provisions of Mississippi Workers' Compensation Act do not apply; even if Workers' Compensation Act provisions did apply, it would not help child where there was no proof that she was dependent on deceased at time of his death, or that claim on decedent for support had ever been made, because section specifically states that acknowledged illegitimate child, dependent on decedent, may recover. Ivy v. Illinois C. G. R. Co., 510 So. 2d 520, 1987 Miss. LEXIS 2619 (Miss. 1987).

One of the primary purposes of the Workmen's Compensation Law is to relieve society of the burden of supporting in orphanages or public almshouses helpless children, who have been left without means of support because of the death of wage earners who have lost their lives in industrial accidents, and the benefits of the law are not limited to children begotten in lawful wedlock. Stanley v. McLendon, 220 Miss. 192, 70 So. 2d 323, 1954 Miss. LEXIS 425 (Miss. 1954).

An illegitimate child of deceased employee is entitled to benefits if dependent upon the deceased. Fernwood Industries, Inc. v. Mitchell, 219 Miss. 331, 68 So. 2d 830, 1953 Miss. LEXIS 392 (Miss. 1953).

Where the evidence showed the contributions by deceased worker to the support and maintenance of his illegitimate son under eighteen years of age during the last four years consisted of three pairs of pants, a shirt, and now and then a nickel, dime or quarter, and the claimant was living in the home of his mother and stepfather and they were furnishing him all clothing, sustenance, and school expense, their illegitimate son was not a dependent of the employee and was not entitled to the death benefits. Fernwood Industries, Inc. v. Mitchell, 219 Miss. 331, 68 So. 2d 830, 1953 Miss. LEXIS 392 (Miss. 1953).

The statutory presumption that children are presumed to be dependent does not apply to illegitimate children and the fact of dependency must be shown. Fernwood Industries, Inc. v. Mitchell, 219 Miss. 331, 68 So. 2d 830, 1953 Miss. LEXIS 392 (Miss. 1953).

A deceased employee's alleged illegitimate child was not entitled to death benefits unless she could show by competent evidence that she was an acknowledged illegitimate child dependent upon the deceased. Stanford v. Stanford, 219 Miss. 236, 68 So. 2d 275, 1953 Miss. LEXIS 385 (Miss. 1953).

Where deceased continued to support his two acknowledged, illegitimate children after their mother had married another, the children were entitled to be recognized as dependent children of deceased. Watkins v. Taylor, 216 Miss. 822, 63 So. 2d 225, 1953 Miss. LEXIS 701 (Miss. 1953).

Workmen's Compensation Law which allows payments of compensation to acknowledged illegitimate child dependent upon deceased's labor, and to bigamous wife upon death of the putative husband is not repugnant to the Constitution nor any public policy in regard to bigamy. Pathfinder Coach Div. of Superior Coach Corp. v. Cottrell, 216 Miss. 358, 62 So. 2d 383, 1953 Miss. LEXIS 646 (Miss. 1953).

10. — —Step children.

Children of a mistress, if supported by a workman, are dependents entitled to compensation for his death, although their parents are living. Dependents of Boen v. Foster, 241 Miss. 520, 130 So. 2d 877, 1961 Miss. LEXIS 369 (Miss. 1961).

A finding that the second wife of a deceased employee, as well as her children by a former marriage, were entitled to share in the death benefits resulting from the employee's death, was affirmed, where there was evidence showing that the stepchildren were dependent upon the decedent for support, and that the wife and children were not living apart from the decedent without justifiable excuse. Bolton v. Easterling, 232 Miss. 236, 98 So. 2d 658, 1957 Miss. LEXIS 463 (Miss. 1957).

Where a mother of an illegitimate child married someone other than the father, and the child was supported by the husband, the child was the husband's stepchild. Pigford Bros. Constr. Co. v. Evans, 225 Miss. 411, 83 So. 2d 622, 1955 Miss. LEXIS 598 (Miss. 1955).

11. —Parents.

Mother of decedent was not entitled to bring wrongful death action where decedent was killed when he was struck by car while working on highway project; contention that wrongful death statute controlled over Workers' Compensation provision which provided that it would be exclusive remedy was rejected; argument that because mother was not dependent on decedent, exclusive remedy provision in death benefit cases did not apply was also rejected, because act intended to provide exclusive remedy growing out of employer-employee relationship, and different result would subject employer in many instances to double liability. Estate of Morris v. W. E. Blain & Sons, Inc., 511 So. 2d 945, 1987 Miss. LEXIS 2698 (Miss. 1987).

A mother who was at least partially dependent upon her son was entitled to benefits under the Workmen's Compensation Law, when the son was killed in the course of his employment where the record showed that, although the son's support had been irregular, he had contributed to his mother's support since he was 13 years of age, omitting the time he was incarcerated for manslaughter. Magnolia Constr. Co. v. Dependent of Stovall, 250 Miss. 761, 168 So. 2d 297, 1964 Miss. LEXIS 499 (Miss. 1964).

Evidence that deceased employee had furnished money and supplies for the support of his two minor brothers and of his father who was in poor health and had not been gainfully employed during the two years next prior to his death sustained the commission's finding that the father and the minor brothers were totally dependent upon the deceased at the time of his death. Truck Trailer Sales & Service Co. v. Moore, 244 Miss. 317, 141 So. 2d 541, 1962 Miss. LEXIS 451 (Miss. 1962).

Evidence that deceased employee had made cash contributions to his parents on numerous, although irregular, occasions, had done the heavy manual work on their farm, and other than at times when he was working on construction projects, he had lived with his parents, except during a brief interval of an unsuccessful marriage, sustained the finding that the parents were partially dependent upon the employee, had reasonable grounds to anticipate continuing future support from him, and, thus, were dependents. Mid-State Paving Co. v. Farthing, 233 Miss. 333, 101 So. 2d 850, 1958 Miss. LEXIS 386 (Miss. 1958).

12. —Surviving spouse, generally.

Husband is dependent of wife, for purposes of worker's compensation, where at time of wife's death, husband is totally disabled and his own worker's compensation claim for permanent disability benefits is subject to motion to controvert by employer. Ingalls Shipbuilding Div., Litton Systems, Inc. v. Dependents of Sloane, 480 So. 2d 1117, 1985 Miss. LEXIS 2377 (Miss. 1985).

A widow, to qualify as a dependent for the purposes of the Workmen's Compensation Law must have entered into a ceremonial marriage pursuant to a license, in compliance with the provisions of Code 1942, §§ 465 and 465.5. South Cent. Heating & Plumbing Co. v. Dependents of Campbell, 219 So. 2d 140, 1969 Miss. LEXIS 1413 (Miss. 1969).

The presumption of dependency of a widow, created by this provision, is conclusive. Watson v. National Burial Asso., 234 Miss. 749, 107 So. 2d 739, 1958 Miss. LEXIS 547 (Miss. 1958).

Although sexual relationship in a marriage is usual, it is not essential to establish the requirement under the Workmen's Compensation Law that the husband and wife are living with each other, where other conditions and circumstances of marriage relationship exists. Stewart Co. v. Christmas, 224 Miss. 29, 79 So. 2d 526, 1955 Miss. LEXIS 457 (Miss. 1955).

Words "surviving wife" mean a widow who is entitled to compensation under the provisions of law. Watkins v. Taylor, 216 Miss. 822, 63 So. 2d 225, 1953 Miss. LEXIS 701 (Miss. 1953).

The Constitution does not announce a paramount public policy prohibiting legislation which would allow a bigamous wife to recover benefits under the Workmen's Compensation Law. Pathfinder Coach Div. of Superior Coach Corp. v. Cottrell, 216 Miss. 358, 62 So. 2d 383, 1953 Miss. LEXIS 646 (Miss. 1953).

Under subsection (18) of Code 1942, § 6998-02 [now subsection (n) of Code 1972, § 71-3-3], a widow is presumed to be dependent, but this is a rebuttable presumption. Thomas v. Contractor's Material Co., 213 Miss. 672, 57 So. 2d 494, 1952 Miss. LEXIS 409 (Miss. 1952).

13. — —Common-law spouse.

Where the deceased employee has been married in a ceremonial marriage to a woman who admitted at the time of her marriage that she had two undivorced husbands from two prior ceremonial marriages but there was no evidence that these prior marriages had been legal or were dissolved before marriage to the deceased employee, such woman was the surviving common-law wife of the employee for the purpose of determining to whom the workmen's compensation award should be made. Anderson-Tully Co. v. Wilson, 221 Miss. 656, 74 So. 2d 735, 1954 Miss. LEXIS 573 (Miss. 1954).

14. — —Separation.

A woman separated but not divorced from her husband who was awarded separate maintenance by a court of a sister state within three years of the separation was a widow within the meaning of this section even though she had not filed a separate maintenance suit in this state. Walton v. McLendon, 342 So. 2d 732, 1977 Miss. LEXIS 2323 (Miss. 1977).

A widow is not entitled to compensation for her husband's death where, without justification, she has lived apart from him for more than three years, and in open adultery. Jackson Oil Products Co. v. Curtis, 241 Miss. 188, 129 So. 2d 403, 1961 Miss. LEXIS 330 (Miss. 1961).

A woman who, for justifiable cause, has separated from her husband is, where the separation has been for less than three years, entitled to compensation for his death, although she has been supporting herself without his aid. Watson v. National Burial Asso., 234 Miss. 749, 107 So. 2d 739, 1958 Miss. LEXIS 547 (Miss. 1958).

A woman deserted by her husband, who contracted a ceremonial marriage with another without herself having obtained, or knowing whether her husband had obtained, a divorce, and lived with such other as his wife, will be regarded as his widow within the Workmen's Compensation Law, where there is no showing as to whether her lawful husband was living or undivorced. Jackson v. Bailey, 234 Miss. 697, 107 So. 2d 593, 1958 Miss. LEXIS 540 (Miss. 1958).

Where one of two alleged widows claiming compensation had been ceremoniously married to the employee while she had an undivorced husband, and then separated from him, and thereafter the employee lived with another woman as husband and wife, the former was not a widow within the provision of the statute even though after the separation the husband brought her gifts. United Timber & Lumber Co. v. Alleged Dependents of Hill, 226 Miss. 540, 84 So. 2d 921, 1956 Miss. LEXIS 432 (Miss. 1956).

The principal test of whether husband and wife are living with each other is whether they are living as husband and wife with voluntary recognition of the relationship, and with no design or agreement to live apart free from the reciprocal marital rights and duties. Stewart Co. v. Christmas, 224 Miss. 29, 79 So. 2d 526, 1955 Miss. LEXIS 457 (Miss. 1955).

Where an employee, who was killed while working in the course of his employment, worked at public work and lived at different places, visited his family from one to three times a week, and contributed the major portion of his earnings to their support, and his wife's health was bad, the deceased and the widow were living together within the meaning of Workmen's Compensation Law and the widow was entitled to compensation. Stewart Co. v. Christmas, 224 Miss. 29, 79 So. 2d 526, 1955 Miss. LEXIS 457 (Miss. 1955).

The term widow or widower as contemplated in the Workmen's Compensation Law shall not apply to any person who has since his or her separation from decedent entered into a ceremonial marriage or lived in open adultery with another. Watkins v. Taylor, 216 Miss. 822, 63 So. 2d 225, 1953 Miss. LEXIS 701 (Miss. 1953).

Where a wife left her husband and lived with another man, she was estopped from recovery of workmen's compensation for the death of her husband. Thomas v. Contractor's Material Co., 213 Miss. 672, 57 So. 2d 494, 1952 Miss. LEXIS 409 (Miss. 1952).

It is not sufficient for the widow to show that she left the deceased for justifiable cause. Thomas v. Contractor's Material Co., 213 Miss. 672, 57 So. 2d 494, 1952 Miss. LEXIS 409 (Miss. 1952).

Where a man and woman lived together for three years and a child was born, but they did not hold themselves out as husband and wife, and both later separated and each of them contracted a ceremonial marriage, this was insufficient evidence to substantiate a common-law marriage and the man's subsequent ceremonial marriage was valid, and the widow was entitled to compensation upon the death of her husband. United States Fidelity & Guaranty Co. v. Smith, 211 Miss. 573, 52 So. 2d 351, 1951 Miss. LEXIS 389 (Miss. 1951).

15. — —Divorce.

A reconciliation during the pendency of a divorce suit entitles the wife to claim compensation as widow. Dependents of Boen v. Foster, 241 Miss. 520, 130 So. 2d 877, 1961 Miss. LEXIS 369 (Miss. 1961).

16. Dependency, presumption of.

The conclusive presumption that the natural child of a deceased employee was his dependent was terminated as of the date of the child's adoption, and from that date she was and is conclusively presumed to be a dependent of her adopted father for workmen's compensation purposes. W. R. Fairchild Constr. Co. v. Owens, 224 So. 2d 571, 1969 Miss. LEXIS 1295 (Miss. 1969).

The presumption of dependency of a widow, created by this provision, is conclusive. Watson v. National Burial Asso., 234 Miss. 749, 107 So. 2d 739, 1958 Miss. LEXIS 547 (Miss. 1958).

The provision that children under 18 are presumed to be dependent creates a rule of substantive law to the effect that a child under 18 years of age is conclusively presumed to be dependent. Anderson-Tully Co. v. Wilson, 221 Miss. 656, 74 So. 2d 735, 1954 Miss. LEXIS 573 (Miss. 1954).

The statutory presumption that children are presumed to be dependent does not apply to illegitimate children and the fact of dependency must be shown. Fernwood Industries, Inc. v. Mitchell, 219 Miss. 331, 68 So. 2d 830, 1953 Miss. LEXIS 392 (Miss. 1953).

Under subsection (18) of Code 1942, § 6998-02 [now subsection (n) of Code 1972, § 71-3-3], a widow is presumed to be dependent, but this is a rebuttable presumption. Thomas v. Contractor's Material Co., 213 Miss. 672, 57 So. 2d 494, 1952 Miss. LEXIS 409 (Miss. 1952).

17. Disability.

Workers Compensation Commission, on remand, erred in holding that an employee successfully rebutted the presumption that she was entitled to no permanent disability as a result of her brief return to accommodated employment because the employee returned to work at the employer full-time with the same job duties and expectations as before and with no accommodations for over seven months, neither the employee's for-cause termination nor her lack of a more advanced degree related to any incapacity to earn wages "because of injury," and the employee failed to present substantial evidence to rebut the presumption that she sustained no loss of wage-earning capacity. Hudspeth Reg'l Ctr. v. Mitchell, — So. 3d —, 2019 Miss. App. LEXIS 179 (Miss. Ct. App. Apr. 30, 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 465 (Miss. 2019), cert. denied, 283 So. 3d 734, 2019 Miss. LEXIS 426 (Miss. 2019).

Employee's wage-earning capacity was properly calculated because an administrative judge (1) weighed a vocational expert's testimony and (2) did not equate the employee's loss of wage-earning capacity with loss of access to the labor market. Itta Bena Plantation III & Benchmark Ins. Co. v. Gates, 282 So. 3d 721, 2019 Miss. App. LEXIS 384 (Miss. Ct. App. 2019).

Claimant for workers' compensation benefits was not entitled to permanent partial disability benefits because the claimant did not suffer a loss of wage-earning capacity as the claimant admitted that the claimant returned to work at the same plant, in the same division, and in the same job but making a higher wage. Pruitt v. Howard Indus., 232 So. 3d 822, 2017 Miss. App. LEXIS 672 (Miss. Ct. App. 2017).

Employer failed to rebut the testimony, the employee's work restrictions, or any medical evidence to overcome the employee's prima facie case of permanent-partial disability from the time of his layoff in 2008 to the present; as the employee proved a work-related injury, a loss of wage-earning capacity resulting in permanent-partial disability, and that the injury related to his disability, the order denying his claim for benefits was reversed. Ladner v. Zachry Constr., 225 So. 3d 580, 2016 Miss. App. LEXIS 473 (Miss. Ct. App. 2016).

Mississippi Workers' Compensation Commission did not err in finding that an employee failed to prove she suffered a permanent disability because the presumption of no loss of wage-earning capacity applied since her post-injury wages were the same as her pre-injury wages; the employee failed to rebut the presumption because she presented no evidence of an increase in wage levels since her injury, that she was working additional hours, or that she was being paid out of her employer's sympathy. Weathersby v. Miss. Baptist Health Sys., 195 So. 3d 877, 2016 Miss. App. LEXIS 421 (Miss. Ct. App. 2016).

Workers' compensation benefits claimant was permanently and totally disabled because an employer refused to rehire the claimant within his restrictions, and the employer did not offer the claimant work in the time period between the restrictions and the date of his termination for allegedly falsifying his original employment application; moreover, the claimant made a valid, but unsuccessful, job search within his restrictions of both sedentary and light work. The claimant's age, education, permanent work restrictions, geographical location, past work experience, inability to return to past employment, loss of access to the job market, and his lack of computer, clerical, or sales experience were all considered. Howard Indus. v. Satcher, 183 So. 3d 907, 2016 Miss. App. LEXIS 1 (Miss. Ct. App. 2016).

ALJ's finding that the claimant was disabled was supported by evidence she was unable to find employment and earn the same wages as before the injury. Hudspeth Reg'l Ctr. v. Mitchell, 202 So. 3d 617, 2015 Miss. App. LEXIS 511 (Miss. Ct. App. 2015).

Workers' Compensation Commission erred in denying a former employee benefits for a permanent and total disability. The testimony from the employee's vocational specialist indicated that the employee had a 100% loss in the labor market, and the testimony of the opposing vocational expert showed that the employee should, at the very least, have been assess a loss of wage-earning capacity. Logan v. Klaussner Furniture Corp., 127 So. 3d 1138, 2013 Miss. App. LEXIS 319 (Miss. Ct. App. 2013), cert. denied, 2014 Miss. LEXIS 11 (Miss. Jan. 9, 2014).

Where both of a workers' compensation claimant's doctors testified that the claimant's injuries were consistent with the injury that the claimant described wherein a patient fell onto the claimant's shoulder and the claimant's back popped, the claimant's resulting disability, defined under Miss. Code Ann. § 71-3-3(i), was compensable because it was work-related under Miss. Code Ann. § 71-3-7. Lang v. Miss. Baptist Med. Ctr., 53 So. 3d 814, 2010 Miss. App. LEXIS 588 (Miss. Ct. App. 2010).

Award of permanent disability benefits was affirmed because substantial evidence supported an administrative judge's finding that an employee sustained a 75 percent loss of wage-earning capacity due to a work-related injury to the employees' back, which rendered the employee disabled under Miss. Code Ann. § 71-3-3(i). Furthermore, a doctor told the employee to limit the employee's bending, lifting, stooping, and climbing, and the employee made a credible search for work after the employee reached maximum medical improvement, but potential employers rebuffed the employee. Harrison County Bd. of Supervisors v. Black, 127 So. 3d 272, 2013 Miss. App. LEXIS 148 (Miss. Ct. App.), cert. denied, 127 So. 3d 1115, 2013 Miss. LEXIS 663 (Miss. 2013).

Evidence supported the workers' compensation commission's finding that an employee had sustained a fifty percent loss of wage-earning capacity and the award of temporary total disability benefits as the record showed that, while the employee presented to the employer for re-hire after his original injury, his post-injury condition progressively worsened, ultimately resulting in his retirement; however, as acknowledged by the commission, the employee failed to seek alternative work positions from the employer before retiring, even though he had the capacity to perform alternative duties. Durbin v. Brown, 178 So. 3d 789, 2013 Miss. App. LEXIS 166 (Miss. Ct. App. 2013).

Mississippi Workers' Compensation Commission's finding that there was no loss of wage-earning capacity was supported by substantial evidence because the evidence showed that the claimant could have returned to the claimant's previous job had there been a job available, and that the claimant could have found employment earning the same amount of pre-injury income. Whiddon v. Southern Concrete Pumping, LLC, 114 So. 3d 18, 2013 Miss. App. LEXIS 208 (Miss. Ct. App. 2013).

Denial of permanent partial disability benefits to the employee in a workers' compensation action was improper because his post-injury income would have been higher but for a climbing restriction and therefore, the Workers' Compensation Commission erred by finding that the injury had no impact on his wage-earning potential, Miss. Code Ann. § 71-3-3(i). Gregg v. Natchez Trace Elec. Power Ass'n, 64 So. 3d 473, 2011 Miss. LEXIS 280 (Miss. 2011).

Where a workers' compensation claimant was released to work with a 10 percent disability rating and a climbing restriction, as his post-injury earnings exceeded his pre-injury earnings, the record indicated that his employer accommodated him as a matter of policy, not generosity, and as his testimony failed to show that he could not earn overtime pay or perform his job duties with his climbing restriction, he failed to present sufficient evidence to rebut the presumption of no loss of wage-earning capacity. Gregg v. Natchez Trace Elec. Power Ass'n, 64 So. 3d 489, 2010 Miss. App. LEXIS 289 (Miss. Ct. App. 2010).

In a workers' compensation action, a finding that the employee sustained a 15 percent loss of use to each of his knees was proper under Miss. Code Ann. ‘ 71-3-3(i) because, although he had some limitations, there was no conclusion that he was completely unable to work. There was no merit to the employee's claim that the administrative law judge erred when she declined to find that the employee suffered a total occupational loss of use of his legs. Smith v. Masonite Corp., 48 So. 3d 565, 2010 Miss. App. LEXIS 168 (Miss. Ct. App. 2010).

Modification of the disability award in a workers' compensation action down to a 30 percent permanent partial disability award was appropriate under Miss. Code Ann. §§ 71-3-3(i) and 71-3-17(a) because the employee failed to prove that he suffered permanent total disability. The employee was released by two doctors without work restrictions and he failed to reapply or make an otherwise diligent effort to return to work with the employer after reaching maximum medical improvement; further, one doctor was unable to explain the employee's subjective complaints about pain in his leg and another doctor was likewise also unable to explain the employee's complaints of decreased sensation in the leg. Smith v. Johnston Tombigbee Furniture Mfg. Co., 43 So. 3d 1159, 2010 Miss. App. LEXIS 144 (Miss. Ct. App.), cert. denied, 49 So. 3d 106, 2010 Miss. LEXIS 470 (Miss. 2010).

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Substantial evidence supported the ruling of the Mississippi Workers' Compensation Commission to affirm an administrative law judge's (ALJ) decision awarding an employee permanent partial disability benefits of $ 15 per week for 450 weeks because the employee made it clear during his testimony that he chose to stay at home and not seek employment, and the ALJ determined that the employee's decision did not alleviate his duty to seek employment; the ALJ ultimately found that the employee had not satisfied his burden of seeking alternative employment and found that the evidence did support some loss of wage-earning capacity. Lopez v. Zachry Constr. Corp., 22 So. 3d 1235, 2009 Miss. App. LEXIS 767 (Miss. Ct. App. 2009).

In a workers' compensation action, simply because the employee did not return to the employer to seek employment was of no consequence. The record reflected that the employee looked for employment elsewhere, which was in accordance with Miss. Code Ann. § 71-3-3(i). Johnson v. Sanderson Farms, Inc., 17 So. 3d 1119, 2009 Miss. App. LEXIS 551 (Miss. Ct. App. 2009).

Workers' compensation benefits claimant was entitled to permanent total disability benefits under Miss. Code Ann. § 71-3-17(a) where she provided documentation that she had made 194 attempts to find another job, and there was no substantial evidence showing that the claimant's efforts were a sham, less than reasonable, or without proper diligence. Lott v. Hudspeth Ctr., 26 So. 3d 1057, 2008 Miss. App. LEXIS 597 (Miss. Ct. App. 2008), rev'd, 26 So. 3d 1044, 2010 Miss. LEXIS 11 (Miss. 2010).

Award of permanent total disability to the claimant was appropriate under Miss. Code Ann. § 71-3-3(I) because he met his burden of proof showing that he had a work-related disability. The medical proof and the claimant's testimony were to the effect that as a result of the injury, he suffered severe permanent physical limitations. Ameristar Casino-Vicksburg v. Rawls, 2 So. 3d 675, 2008 Miss. App. LEXIS 479 (Miss. Ct. App. 2008).

Finding that the employee sustained a 70 percent loss of wage-earning as a result of a work-related injury while employed with the employer was appropriate pursuant to Miss. Code Ann. § 71-3-3(i) because the law did not require that the employee move to another part of the state or another state with regard to the duty to make reasonable effort to secure other comparable gainful employment. Therefore, the employee was not required to move to Florida in order to satisfy her duty to seek other employment. Goolsby Trucking Co. v. Alexander, 982 So. 2d 1013, 2008 Miss. App. LEXIS 314 (Miss. Ct. App. 2008).

Mississippi Workers' Compensation Commission correctly determined that an employee had not established a prima facie case under Jordan because the employee reported back to work before she reached maximum medical improvement; thus, even assuming the evidence otherwise supported the application of the Jordan presumption, the employee did not establish a prima facie case of total disability under Jordan. Lifestyle Furnishings v. Tollison, 985 So. 2d 352, 2008 Miss. App. LEXIS 182 (Miss. Ct. App. 2008).

Mississippi Workers' Compensation Commission found that although a claimant could not resume work in her pre-injury employment, she had not made sufficient efforts to obtain other employment to meet the definition of "disability" under Miss. Code Ann. § 71-3-3(I) because her search for other employment was not reasonable, and the Commission only awarded permanent partial disability benefits under Miss. Code Ann. § 71-3-17(c). The Commission's decision was supported by substantial evidence, it was the Commission's to make, and in reversing the Commission's decision and awarding the claimant permanent, total disability under Miss. Code Ann. § 71-3-17(a), the circuit court improperly invaded the Commission's decision-making authority. Lifestyle Furnishings v. Tollison, 985 So. 2d 352, 2008 Miss. App. LEXIS 182 (Miss. Ct. App. 2008).

In an action in which an employer appealed from a judgment of the Harrison County Circuit Court, which affirmed the Mississippi Workers' Compensation Commission decision that the employee's worker's compensation claim was compensable, the judgment was affirmed where: (1) substantial evidence existed from which the Commission could have determined that the employee's employment caused his injury; (2) the list provided by the employee in mid-January of 2004 enumerated six attempts to locate employment between September 3, 2003, and October 6, 2003; and (3) the Commission was not clearly erroneous for finding that the employee's job search was diligent, despite his refusal to work with the vocational expert. Imperial Palace Casino v. Wilson, 960 So. 2d 549, 2006 Miss. App. LEXIS 928 (Miss. Ct. App. 2006).

As medical testimony established that an employee suffered from bilateral carpal tunnel syndrome and a vocational expert testified about the difficulty the employee would have in finding other work, the employee met his burden of proving a disability under Miss. Code Ann. § 71-3-3. Binswanger Mirror v. Wright, 947 So. 2d 346, 2006 Miss. App. LEXIS 652 (Miss. Ct. App. 2006).

There was substantial evidence on which the workers' compensation commission could have found that a claimant did not prove that she was disabled where, inter alia, while it did appear that she attempted, on one occasion, to contact her employer and return to her job in July of 1996, she did not assert that she sought any other employment, rather, she simply argued that she was unable to even attempt to go to work. That argument was contrary to her arguments before the unemployment appeals referee, wherein she claimed to have been able to return to light duty work and it was also contrary to the testimony of all three testifying physicians. Digrazia v. Park Place Entm't, 914 So. 2d 1232, 2005 Miss. App. LEXIS 849 (Miss. Ct. App. 2005).

Finding that the employee in a workers' compensation case was permanently and totally disabled was appropriate because he had met his burden set forth in Miss. Code Ann. § 71-3-3(I). He had attempted to perform lighter-duty work after his surgery but could not perform any of the tasks assigned to him. Mueller Copper Tube Co. v. Upton, 930 So. 2d 428, 2005 Miss. App. LEXIS 801 (Miss. Ct. App. 2005), cert. denied, 933 So. 2d 303, 2006 Miss. LEXIS 495 (Miss. 2006).

Workers' Compensation Commission erred in applying the no loss of wage presumption because the claimant's disability or inability to earn his pre-injury wages as provided in Miss. Code Ann. § 71-3-3 (i) had not fully manifested itself when he returned to work after surgery. Undisputed testimony and medical evidence showed that the claimant was permanently totally disabled and that the Commission erred in disregarding the evidence that showed the claimant's condition worsened after the surgery and left him unable to work at his pre-injury job and pay as a carpenter. Univ. of Miss. Med. Ctr. v. Smith, 909 So. 2d 1209, 2005 Miss. App. LEXIS 93 (Miss. Ct. App. 2005).

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Trial court properly denied an employee's claim for permanent disability benefits in a case where the employee's post-injury unemployment arose due to her unwillingness to carry out tasks she was physically capable of performing, rather than from a permanent diminished physical ability to perform in the workplace arising out of her work-related neck injury. Wagner v. Hancock Med. Ctr., 825 So. 2d 703, 2002 Miss. App. LEXIS 485 (Miss. Ct. App. 2002).

The Worker's Compensation Commission erred as a matter of law when it refused to consider the extent of the claimant's efforts to find other suitable employment for which he might be suited in his post-injury condition when assessing the extent of his permanent partial disability. Entergy Mississippi, Inc. v. Robinson, 777 So. 2d 53, 2000 Miss. App. LEXIS 580 (Miss. Ct. App. 2000).

The claimant did not sustain a disability within the meaning of the statute and, therefore, was not entitled to permanent disability benefits, notwithstanding that she sustained an 8-10 percent permanent impairment, where her post-injury income exceeded her pre-injury income. Winters v. Choctaw Maid Farms, 782 So. 2d 155, 2000 Miss. App. LEXIS 218 (Miss. Ct. App. 2000).

The fact that the claimant voluntarily retired from her position together with the fact that she did not try to find another job for seven months after leaving her employer supported the determination that she did not make reasonable efforts to obtain gainful employment and, therefore, was not disabled. Ford v. Emhart, Inc., 755 So. 2d 1263, 2000 Miss. App. LEXIS 54 (Miss. Ct. App. 2000).

Workers' compensation claimant who has reached maximum medical recovery can establish prima facie showing of total disability if claimant reports back to work, and employer refuses to reinstate or rehire claimant, and burden then shifts to employer to prove that claimant suffered only partial disability or that claimant suffered no loss of wage earning capacity. Hale v. Ruleville Health Care Ctr., 687 So. 2d 1221, 1997 Miss. LEXIS 34 (Miss. 1997).

Workers' compensation claimant made out prima facie case for permanent total disability by showing that, after reaching maximum medical improvement, she sought but was unable to find employment. Hale v. Ruleville Health Care Ctr., 687 So. 2d 1221, 1997 Miss. LEXIS 34 (Miss. 1997).

Employer rebutted workers' compensation claimant's prima facie case for permanent total disability by showing that employee's efforts at securing employment did not involve reasonable diligence. Hale v. Ruleville Health Care Ctr., 687 So. 2d 1221, 1997 Miss. LEXIS 34 (Miss. 1997).

A finding by the Workers' Compensation Commission that an injured manual laborer who was restricted by his doctor to lifting less than 40 pounds suffered only minimal industrial incapacity was not supported by substantial evidence where the decision was based largely on an alleged policy of the employer requiring workers to seek assistance when lifting more than 40 pounds, but the record contained no evidence of such a policy. DeLaughter v. South Cent. Tractor Parts, 642 So. 2d 375, 1994 Miss. LEXIS 367 (Miss. 1994).

A finding by the Workers' Compensation Commission that a lumberyard worker had sustained only a 50 percent loss of wage-earning capacity, and therefore suffered only partial rather than total permanent disability, would be reversed where the evidence indicated that he had difficulty performing "make-work" tasks at his employer's lumberyard after he returned to work and that his efforts to find other employment were unsuccessful, and the Commission's finding was based on the conclusion that the employee should have been able to secure "some type of gainful employment" merely because he had a high school education. Barnes v. Jones Lumber Co., 637 So. 2d 867, 1994 Miss. LEXIS 282 (Miss. 1994).

A claimant was not entitled to permanent total disability benefits, even though his neurosurgeon and his chiropractor found him to be totally disabled, where the claimant continued to work full time for his employer and therefore showed no loss of wage earning capacity as a result of his injuries. Lanterman v. Roadway Express, Inc., 608 So. 2d 1340, 1992 Miss. LEXIS 564 (Miss. 1992).

Despite a claimant's increase in earnings, his earning capacity and his employability in the market place had been reduced due to Meniere's Syndrome where the presumption of earning capacity commensurate with post-injury earnings was rebutted by the following factors: (1) Meniere's Syndrome is a whole body disability; (2) it is lifelong in nature; (3) it affects the activities of daily living, both occupationally and socially; (4) the claimant's daily bouts with vertigo would put him at a disadvantage in an industrial setting where there were machines in operation; (5) one of the claimant's biggest fears was losing his balance and falling into one of the machines he was operating; and (6) there had been an increase in general wage levels for all employees in the claimant's class since 1984. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250, 1991 Miss. LEXIS 763 (Miss. 1991).

A claimant may continue to be temporarily disabled, even though he or she has received maximum recovery from conservative care, if his or her condition can be improved by surgery. McGowan v. Orleans Furniture, Inc., 586 So. 2d 163, 1991 Miss. LEXIS 596 (Miss. 1991).

The evidence was sufficient to support a finding that a claimant suffered only a 5 percent permanent partial occupational disability by reason of a work-connected injury to his left hand, where the claimant failed to offer evidence that he had unsuccessfully attempted to perform his usual duties, and he failed to offer evidence that he was refused employment based upon the disability to his hand in that he made no search for work outside his prior employment, stating that his car had been repossessed and he was without transportation. Walker Mfg. Co. v. Cantrell, 577 So. 2d 1243, 1991 Miss. LEXIS 190 (Miss. 1991).

A claimant who suffered a 25 percent permanent impairment to the body was not entitled to an award of permanent partial disability benefits since she did not establish a loss of wage earning capacity attributable to the compensable injury, where the evidence showed that she experienced an overall increase of post-injury wages and she offered no proof to rebut the presumption of no loss of wage earning capacity by showing that the post-injury earnings were not reliable in determining wage earning capacity. International Paper Co. v. Kelley, 562 So. 2d 1298, 1990 Miss. LEXIS 274 (Miss. 1990).

An employee's job-related contact dermatitis caused by exposure to sulfur dioxide constituted a permanent loss of wage earning capacity, such that the employee was entitled to permanent partial disability benefits, where the employee's sensitivity was permanent in nature so that he could not be exposed to sulfur dioxide in the future, and he made reasonable though unsuccessful efforts to find other comparably gainful employment. Piper Industries, Inc. v. Herod, 560 So. 2d 732, 1990 Miss. LEXIS 196 (Miss. 1990).

Generally, "medical" disability is the equivalent of functional disability and relates to actual physical impairment. "Industrial" disability is the functional or medical disability as it affects the claimant's ability to perform the duties of employment. Robinson v. Packard Electric Div., General Motors Corp., 523 So. 2d 329, 1988 Miss. LEXIS 199 (Miss. 1988).

Since the disability contemplated by the Worker's Compensation Act is an occupational disability, an injured employee is entitled to compensation to the extent that he has been incapacitated to earn wages, and the fact that such employee retains substantial functional abilities in no way undercuts the conclusion that he or she may be totally occupationally disabled. Marshall Durbin, Inc. v. Hall, 490 So. 2d 877, 1986 Miss. LEXIS 2493 (Miss. 1986).

A claimant who developed a work-related respiratory ailment made out a prima facie case of disability which was unrebutted by his employer where, after the claimant had presented evidence of his physical impairment, age, education, work experience, and unsuccessful efforts to secure employment, the employer failed to present any evidence from such sources as employment agencies clearly showing the local accessibility of substantial gainful employment suited to the claimant's medical condition. Pontotoc Wire Products Co. v. Ferguson, 384 So. 2d 601, 1980 Miss. LEXIS 2009 (Miss. 1980).

In determining whether a claimant for worker's compensation is unable to earn wages in former or other employment so as to fall within the statutory definition of the term "disabled," the claimant has the burden of proof to make out a prima facie case for disability, after which the burden of proof shifts to the employer to rebut or refute the claimant's evidence. Thompson v. Wells-Lamont Corp., 362 So. 2d 638, 1978 Miss. LEXIS 2137 (Miss. 1978).

The legislative intent, as expressed in subsection (9) of Code 1942, § 6998-02 [now subsection (i) of Code 1972, § 71-3-3] means that a claimant must, after his disability subsides, seek employment in another or different trade to earn his wages. B.J. Collins v. Miss. Employment Sec. Comm., 190 So. 2d 894, 1966 Miss. LEXIS 1419 (Miss. 1966).

The 1960 amendment of this section [Code 1942, § 6998-02] does not operate to make medical findings the exclusive basis for establishing extent of disability. I. Taitel & Son v. Twiner, 247 Miss. 785, 157 So. 2d 44, 1963 Miss. LEXIS 356 (Miss. 1963).

Since a claim for disability is separate and distinct from a claim for death benefits, the 1960 amendment to subsection (9) of Code 1942, § 6998-02 [now subsection (i) of Code 1972, § 71-3-3], requiring that incapacity and the extent thereof be supported by medical findings, did not eliminate the presumption of causal connection between the employment and death occurring while the employee is engaged in the duties of his employment, particularly since the 1960 amendment did not affect subsection (3) of Code 1942, § 6998-02 [now subsection (c) of Code 1972, § 71-3-3]. L. B. Priester & Son, Inc. v. Bynum, 244 Miss. 185, 137 So. 2d 907, 1962 Miss. LEXIS 438 (Miss. 1962).

18. Employee, generally.

Mississippi Workers' Compensation Commission erred by declaring that a claimant's permanent total disability benefits related back to the date of injury, as he was not "disabled" on that date because he was able to continue to work thereafter. Eaton Corp. v. Brown, 130 So. 3d 1131, 2013 Miss. App. LEXIS 344 (Miss. Ct. App. 2013), cert. denied, 131 So. 3d 578, 2014 Miss. LEXIS 80 (Miss. 2014).

Finding in favor of the employee in a workers' compensation action was appropriate because a contract of hire existed and the employee met the statutory definition of "employee" for workers' compensation purposes under Miss. Code Ann. § 71-3-3(d) (Rev. 2000). Hugh Dancy Co. v. Mooneyham, 68 So. 3d 76, 2011 Miss. App. LEXIS 74 (Miss. Ct. App.), cert. denied, 69 So. 3d 9, 2011 Miss. LEXIS 401 (Miss. 2011).

Workers' compensation death benefits were improperly awarded to a trucking company employee's wife because the fact that the employee remained at a truck stop bar for eleven hours drinking, and was then shot by a patron, was not reasonably incident to employment; the employee was not on a temporary personal errand. Total Transp., Inc. v. Shores, 968 So. 2d 456, 2006 Miss. App. LEXIS 874 (Miss. Ct. App. 2006), aff'd, 968 So. 2d 400, 2007 Miss. LEXIS 525 (Miss. 2007).

In order to establish the liability of the insurance carrier, it is essential that a contract of hire or apprenticeship, written or oral, expressed or implied, as required in subsection (4) of Code 1942, § 6998-02 [now subsection (d) of Code 1972, § 71-3-3] be proved. Sullivan v. Heirs of Sullivan, 192 So. 2d 277, 1966 Miss. LEXIS 1244 (Miss. 1966).

Whether the relation between the mover of oil well drilling equipment and a member of a driller's crew who was injured while lending a hand to the mover in placing equipment was that of master and servant, so as to preclude an action for negligence, held to be for trier of the fact. Clark v. Luther McGill, Inc., 240 Miss. 509, 127 So. 2d 858, 1961 Miss. LEXIS 481 (Miss. 1961).

In cases involving the question whether a person was an employee or an independent contractor, under workmen's compensation statutes the courts have applied the ordinary common-law tests, such as are applied in the actions of tort. Carr v. Crabtree, 212 Miss. 656, 55 So. 2d 408, 1951 Miss. LEXIS 495 (Miss. 1951).

19. — Burden of proof.

Given the claimant's admitted pre-existing history of back pain, this was not a routine case regarding causation and he had the burden of proving causation by medical evidence or testimony before the Workers' Compensation Commission. Burton v. Nissan N. Am., 305 So. 3d 1163, 2020 Miss. App. LEXIS 81 (Miss. Ct. App.), cert. denied, 308 So. 3d 436, 2020 Miss. LEXIS 474 (Miss. 2020).

Substantial evidence supported the finding that the claimant failed to prove that he sustained a compensable work-related injury; the record contained several discrepancies, including from the claimant's own testimony, as to the date of the alleged second work injury as well as to whether the alleged injury was the result of a specific occurrence or the cumulative effect of his work. Further, his medical records lacked support for his contention that he suffered an additional second, or progressive, work injury. Burton v. Nissan N. Am., 305 So. 3d 1163, 2020 Miss. App. LEXIS 81 (Miss. Ct. App.), cert. denied, 308 So. 3d 436, 2020 Miss. LEXIS 474 (Miss. 2020).

Denial of a workers' compensation claim was appropriate because, considering the inconsistencies in the claimant's testimony, the inconsistencies in the claimant's reported medical history, the extended period of time between the claimant's alleged injury and the claimant's report of a work-related injury, and the conflicting medical testimony, the claimant failed to carry the claimant's burden of proof as to causation. Price v. MTD Prods. & Safety Nat'l Cas. Corp., 242 So. 3d 900, 2017 Miss. App. LEXIS 552 (Miss. Ct. App. 2017), cert. denied, 246 So. 3d 68, 2018 Miss. LEXIS 227 (Miss. 2018).

Denial of workers' compensation benefits to an employee was inappropriate because the employee met his burden of proof showing that he had an injury, or an exacerbation of a preexisting injury, when he moved a desk at the behest of his supervisor. Any doubtful claims were to be resolved in favor of compensation. Short v. Wilson Meat House, LLC, 37 So. 3d 50, 2009 Miss. App. LEXIS 333 (Miss. Ct. App. 2009), rev'd, 36 So. 3d 1247, 2010 Miss. LEXIS 310 (Miss. 2010).

Workers' compensation benefits claimant met the burden of showing a causal connection between a work injury and her disability based on the testimony of a doctor, despite the fact that his opinion was based upon the subjective medical history given by the claimant; this implicitly determined that the claimant was credible and moreover her complaints were referenced by two other doctors. AirTran, Inc. v. Byrd, 953 So. 2d 296, 2007 Miss. App. LEXIS 198 (Miss. Ct. App. 2007).

When a claimant, having reached maximum medical recovery, reports back to his or her employer for work, and the employer refuses to reinstate or rehire the claimant, then it is prima facie that the claimant has met his or her burden of showing total disability; the burden then shifts to the employer to prove a partial disability or that the claimant has suffered no loss of wage earning capacity. Jordan v. Hercules, Inc., 600 So. 2d 179, 1992 Miss. LEXIS 224 (Miss. 1992), but see Dulaney v. National Pizza Co., 733 So. 2d 301, 1998 Miss. App. LEXIS 990 (Miss. Ct. App. 1998).

District Court did not err in allowing testimony that in prior death-claim suit against company, decedent's estate had argued decedent was not employee under Mississippi Workmen's Compensation Act. Estate's characterization of decedent as non-employee was sufficiently probative of whether he was employee that it was within discretion of District Court to allow testimony into evidence. Fishel v. American Sec. Life Ins. Co., 835 F.2d 613, 1988 U.S. App. LEXIS 366 (5th Cir. Miss. 1988).

20. — Factors.

Circuit court properly granted a company summary judgment in a worker's action alleging it was liable for its employee's negligence because his exclusive remedy was under the Workers' Compensation Law; the nature of the work was that of an employee covered by the Law because the work did not involve any particular skill or training, and the worker was not in the business of offering similar services to other entities as part of his own independent business. Fortner v. Specialty Contr., LLC, 217 So. 3d 736, 2017 Miss. App. LEXIS 54 (Miss. Ct. App. 2017).

Worker's exclusive remedy was under the Workers' Compensation Law because pursuant to the "control test," the worker was a company's employee not an independent contractor; the company had the right to control the work and it exercised that right, the worker was paid a regular daily wage rather than a fixed fee for some project or job, and the company provided all necessary tools and could have fired him at any time. Fortner v. Specialty Contr., LLC, 217 So. 3d 736, 2017 Miss. App. LEXIS 54 (Miss. Ct. App. 2017).

Mississippi Workers' Compensation Commission did not err in granting a job applicant benefits for an injury he sustained while performing a pre-employment job-function test because there was substantial evidence he was an employee at the time of his injury under an implied contract for hire; the evidence was sufficient to show there was mutual consent for hire and sufficient consideration for a contract for hire, and the employer controlled the applicant's actions in performing the test. Averitt Express, Inc. v. Collins, 172 So. 3d 1252, 2015 Miss. App. LEXIS 384 (Miss. Ct. App. 2015).

Mississippi Workers' Compensation Commission properly ordered an employer to pay a worker benefits because the substantial evidence supported a finding that it employed the worker as an employee, rather than an independent contractor; the Commission found that the factor of the right of control weighed in favor of treating the worker as an employee because the employer required him to work every day,and he exclusively worked for the employer. Southeastern Auto Brokers v. Graves, 210 So. 3d 1012, 2015 Miss. App. LEXIS 205 (Miss. Ct. App. 2015).

The claimant was not an employee of the defendant company where (1) the company did not exercise or have the right to control the manner of the claimant's work, (2) the company did not control the method of payment to the claimant, (3) the company did not furnish equipment to the claimant, and (4) the company did not have the right to hire or fire the claimant. Shelby v. Peavey Elecs. Corp., 724 So. 2d 504, 1998 Miss. App. LEXIS 1073 (Miss. Ct. App. 1998).

Verdict of jury that decedent was not employee was not against great weight of evidence, where he had his own offices, employed his own secretary, had numerous other clients, was not on company's payroll, received no salary, and billed company for his services. Fishel v. American Sec. Life Ins. Co., 835 F.2d 613, 1988 U.S. App. LEXIS 366 (5th Cir. Miss. 1988).

Where manager of lumber company contracted with company to purchase a bi-product formerly waste, and the manager employed the decedent as a truck driver to transport this bi-product, the lumber company was not liable for the death of the truck driver performing his duties for the manager, where there was no evidence that the lumber company controlled the manager in his operation or retained the right of control other than having the right to maintain free access to the lumberyard without interference by the manager's trucks. Granite State Ins. Co. v. Marshall, 275 So. 2d 386, 1973 Miss. LEXIS 1363 (Miss. 1973).

The right of control rather than the actual exercise of control is a primary test of whether a person is an independent contractor or employee, and in a case where there is direct evidence of the right to control, the express or implied exercise of that right, the method of payment, the furnishing of equipment by financing its purchase, and the right to fire; a person so situated and engaged in cutting and hauling pulpwood for a timber dealer was not truly independent, performing an independent business service, but devoted all or most of his time to the dealer's business, was not an independent contractor but an employee of the dealer. Brown v. L. A. Penn & Son, 227 So. 2d 470, 1969 Miss. LEXIS 1358 (Miss. 1969).

In determining the existence of an employer and employee relationship the right to control the employee is one of the dominant factors, but the ultimate right to control is not to be confused with immediate control, for it is the reserved right of control rather than its actual exercise that furnishes a true test of the relationship. Burnham Van Service, Inc. v. Dependents of Moore, 250 Miss. 165, 164 So. 2d 733, 1964 Miss. LEXIS 453 (Miss. 1964).

The workmen's compensation commission's finding that the deceased truck driver was an employee of the truck lessee was warranted by evidence showing that it was the truck lessee who exercised all the control necessary to see that its objectives were carried out in detail, and that the person who paid the truck driver's salary and had the right of discharge, exercised little or no control over the truck driver whatsoever. Burnham Van Service, Inc. v. Dependents of Moore, 250 Miss. 165, 164 So. 2d 733, 1964 Miss. LEXIS 453 (Miss. 1964).

The test of whether or not a person is an employee is not the exercise of, but the right to exercise control. Havens v. Natchez Times Publishing Co., 238 Miss. 121, 117 So. 2d 706, 1960 Miss. LEXIS 386 (Miss. 1960), but see, Webster v. Mississippi Publishers Corp., 1989 Miss. LEXIS 519 (Miss. Dec. 20, 1989).

21. — Independent contractor.

Claimant for unemployment benefits was not an employee of a paramedical company, pursuant to Miss. Code Ann. § 71-5-11, because (1) the written agreement between the parties did not constitute an enforceable contract, much less an enforceable employment contract; and (2) the claimant, who was a phlebotomist or paramedical examiner that performed medical-testing services on applicants for insurance policies pursuant to optional work orders, was an independent contractor, under Miss. Code Ann. § 71-3-3(r).

MEDS, Inc. v. Miss. Dep't of Empl. Sec., 130 So. 3d 148, 2014 Miss. App. LEXIS 13 (Miss. Ct. App. 2014).

Record failed to support the conclusion of the Mississippi Department of Employment Security that a worker constituted an employee under Miss. Code Ann. § 71-5-11(J)(14) because the worker constituted an independent contractor; the worker set his own hours and received a commission, not an hourly wage, and the employer failed to exercise control, nor did it possess a right of control, over the details of the actual sales work at issue. College Network v. Miss. Dep't of Empl. Sec., 114 So. 3d 740, 2013 Miss. App. LEXIS 179 (Miss. Ct. App. 2013).

Denial of workers' compensation benefits to the employee was inappropriate because the finding that she was an independent contractor as set forth in Miss. Code Ann. § 71-3-3(r) was in error; the employer controlled the details of the employee's work by exercising total control over the newspaper racks at issue and she was thus deemed to have been an employee, not an independent contractor. Davis v. The Clarion-Ledger, 938 So. 2d 905, 2006 Miss. App. LEXIS 722 (Miss. Ct. App. 2006).

Company hired to complete specific drilling project for worker's employer was independent contractor and, thus, was not immune from negligence suit under exclusive remedy provision of workers' compensation law as company was sufficiently outside of employer's right to control to assume responsibility for torts of employees. Luther McGill, Inc. v. Bradley, 674 So. 2d 11, 1996 Miss. LEXIS 210 (Miss. 1996).

Subcontractor is not employee of prime contractor, but is instead independent contractor that also happens to be subcontractor; subcontractor is in much better position than mere employee to distribute cost of potential tort liability, as it may include in its subcontract bid price increase which reflects possible tort liability, and to provide immunity would be to totally insulate potential wrongdoer without imposing any obligation, thus tacitly encouraging subcontractors to use less than due care. Estate of Morris v. W. E. Blain & Sons, Inc., 511 So. 2d 945, 1987 Miss. LEXIS 2698 (Miss. 1987).

A construction firm contracted by a corporation to produce and install a finished product in accordance with its own methods, without being subject to corporation control, and with corporation required to furnish construction firm with a crane and an operator at its own cost, is an independent contractor rather than an employee. Ramsey v. Georgia-Pacific Corp., 511 F. Supp. 393, 1981 U.S. Dist. LEXIS 9498 (S.D. Miss. 1981), aff'd, 671 F.2d 1376, 1982 U.S. App. LEXIS 21589 (5th Cir. Miss. 1982).

In an action for compensation benefits by an employee of a logging company which performed services for the plaintiff corporation, the trial court properly held that the logging company was an employee of the plaintiff and that the employee of the logging company was entitled to compensation benefits from the plaintiff where the evidence established that the work done by the logging company was an integral part of the business of the plaintiff and that the plaintiff had complete control of the operations of the logging company. Georgia-Pacific Corp. v. Crosby, 393 So. 2d 1348, 1981 Miss. LEXIS 1923 (Miss. 1981).

Where timber dealer employed several methods of acquiring pulpwood, and no doubt some of the people performing work for it were its employees, nevertheless the relationship between the dealer and workmen's compensation claimant was that of vendor and vendee, since the claimant furnished his own truck, did his own cutting from his father's farm, and the dealer had no connection with the acquisition of the stumpage, and the claimant had not engaged in the pulpwood business prior to the cutting and sale of the loads, one of which he was injured on. Saxton v. L. A. Penn & Sons, Inc., 284 So. 2d 521, 1973 Miss. LEXIS 1263 (Miss. 1973).

A claimant who, together with others engaged in similar activities, cut and hauled pulpwood for a timber dealer under circumstances which constituted him and the other haulers an integral part of the regular business of the dealer was not furnishing an independent business or professional service, was actually under the dealer's direction and control and, consequently, could not be said to be an independent contractor. Brown v. L. A. Penn & Son, 227 So. 2d 470, 1969 Miss. LEXIS 1358 (Miss. 1969).

22. — Particular persons.

County's workers' compensation insurance did not cover medical expenses incurred when a county inmate was injured while working in a county work program because the inmate was not working for the county under a contract of hire, and thus, he was not an employee under the Mississippi Workers' Compensation Act, Miss. Code Ann. § 71-3-3. Vuncannon v. United States, 711 F.3d 536, 2013 U.S. App. LEXIS 5284 (5th Cir. Miss. 2013).

An employer's workers' compensation carrier would be liable for the injuries of an employee who was injured while changing a neighboring business' outdoor advertising sign where the employer had a policy of goodwill toward its business neighbors, which included changing the sign for the neighboring business, and the employees were expected to help foster the goodwill policy; since the employee acted in conformity with his employer's dictates, he acted in the course and scope of his employment, and was not a loaned servant to the neighboring business. Quick Change Oil & Lube v. Rogers, 663 So. 2d 585, 1995 Miss. LEXIS 582 (Miss. 1995).

A student nurse who was injured while engaged in clinical training by a hospital was an apprenticeship employee of the hospital within the meaning of the Workers' Compensation Act, where the student nurse rendered services to the hospital with the primary purpose of learning the "business" of the hospital necessary to acquire her license as an LPN, the hospital received payment from the public for the services rendered by the student nurse, and the student nurse received a "similar advantage," i.e. training, from the hospital which qualified as a "wage" under the statutory definition. Walls v. North Mississippi Medical Center, 568 So. 2d 712, 1990 Miss. LEXIS 577 (Miss. 1990).

An independent oil and gas lease broker, who hired an employee to secure leases on behalf of an oil company, was not a subcontractor where the oil company purchased the leases on its own behalf; thus, the oil company was not liable to the employee for worker's compensation benefits. Amoco Production Co. v. Murphy, 528 So. 2d 1123, 1988 Miss. LEXIS 283 (Miss. 1988).

Subcontractor is not employee of prime contractor, but is instead independent contractor that also happens to be subcontractor; subcontractor is in much better position than mere employee to distribute cost of potential tort liability, as it may include in its subcontract bid price increase which reflects possible tort liability, and to provide immunity would be to totally insulate potential wrongdoer without imposing any obligation, thus tacitly encouraging subcontractors to use less than due care. Estate of Morris v. W. E. Blain & Sons, Inc., 511 So. 2d 945, 1987 Miss. LEXIS 2698 (Miss. 1987).

Store manager's husband, a store employee working in a service and maintenance capacity, who initiated a criminal embezzlement charge against the store cashier was an employee and not a third person within § 71-3-3(b), and the store cashier's malicious prosecution action predicated on husband's action was not precluded by the Worker's Compensation Act. Royal Oil Co. v. Wells, 500 So. 2d 439, 1986 Miss. LEXIS 2565 (Miss. 1986).

A timber dealer who engaged claimant to cut and haul pulpwood from lands in substantially all of which the dealer had previously acquired the timber rights, who deducted from sums due claimant his gasoline, grocery, clothing and truck finance charges, and settled with claimant weekly for balances due for pulpwood cut and hauled by him, was in fact claimant's employer, and liable for compensation payments due claimant for injuries sustained in the course of his work. Brown v. L. A. Penn & Son, 227 So. 2d 470, 1969 Miss. LEXIS 1358 (Miss. 1969).

Immunity from tort liability does not exist in the case of injury to a loaned employee with whom no contract of hire has been made. Index Drilling Co. v. Williams, 242 Miss. 775, 137 So. 2d 525, 1962 Miss. LEXIS 593 (Miss. 1962).

That a workmen's compensation insurance policy extends to executives does not render the insurer liable for compensation awarded to officers serving without pecuniary remuneration affording a basis for paying premiums. Le-Co Gin Co. v. Stratton, 241 Miss. 623, 131 So. 2d 450, 1961 Miss. LEXIS 381 (Miss. 1961).

One engaged to deliver newspapers to subscribers on a motor carrier route, who is required to canvass for additional subscribers, to deliver papers promptly, to sell at established rates, and, in event of relinquishing the route, to endeavor to find a successor, held, under the statute prior to an amendment in 1956, excluding such individuals from the benefit of Workmen's Compensation Law, to be an employee rather than an independent contractor and therefore entitled to compensation for injuries sustained in a highway collision while delivering papers. Havens v. Natchez Times Publishing Co., 238 Miss. 121, 117 So. 2d 706, 1960 Miss. LEXIS 386 (Miss. 1960), but see, Webster v. Mississippi Publishers Corp., 1989 Miss. LEXIS 519 (Miss. Dec. 20, 1989).

Magazine solicitors whose compensation for orders obtained is retained out of the subscription price are not employees in view of subsection (4) of Code 1942, § 6998-02 [now subsection (d) of Code 1972, § 73-3-3 [Repealed]]. Statham v. Blaine, 234 Miss. 649, 107 So. 2d 93, 1959 Miss. LEXIS 575 (Miss. 1959).

A workman may be an independent contractor as to certain work and yet be an employee, or servant, as to other work for the same employer. Mills v. Jones' Estate, 213 Miss. 680, 56 So. 2d 488, 1952 Miss. LEXIS 410 (Miss. 1952), modified, 213 Miss. 680, 57 So. 2d 496, 1952 Miss. LEXIS 411 (Miss. 1952), overruled in part, Railway Express Agency, Inc. v. Hollingsworth, 221 Miss. 688, 75 So. 2d 639, 1954 Miss. LEXIS 580, 1954 Miss. LEXIS 581 (Miss. 1954), overruled, Railway Express Agency, Inc. v. Hollingsworth, 221 Miss. 688, 74 So. 2d 754, 1954 Miss. LEXIS 579 (Miss. 1954).

23. Injury, generally.

Employee's travel to property to deliver a four-wheeler was not on a direct business route between his sales calls and he otherwise did not have a business mission compelling his travel to the property; accordingly, his accident did not arise out of and in the course and scope of his employment, and his heart attack the next day was not compensable as a natural consequence of a work-connected injury. Sims v. Delta Fuel, 308 So. 3d 859, 2020 Miss. App. LEXIS 82 (Miss. Ct. App.), cert. denied, — So. 3d —, 2020 Miss. LEXIS 386 (Miss. 2020), cert. denied, 302 So. 3d 645, 2020 Miss. LEXIS 379 (Miss. 2020).

Where the employee sustained a back injury when she slipped and fell against the back of the toilet at work, the administrative law judge correctly determined that the employee was engaged in a personal-comfort activity that was reasonably incident to her employment for purposes of Miss. Code Ann. § 71-3-3(b). The Mississippi Workers' Compensation Commission's denial of workers' compensation benefits based on a finding that the employee had a degenerative condition was not supported by substantial evidence, because a doctor testified that the employee's pre-existing problems did not cause the disc rupture; the Court of Appeals of Mississippi held that the employee was entitled to receive benefits. White v. Miss. Dep't of Corr., 28 So. 3d 619, 2009 Miss. App. LEXIS 469 (Miss. Ct. App. 2009), cert. denied, 27 So. 3d 404, 2010 Miss. LEXIS 101 (Miss. 2010).

Mississippi Workers' Compensation Commission (Commission) properly found that there was no presumption of a casual connection between the husband's work and his death, Miss. Code Ann. § 71-3-3(b), and the wife failed to prove that her husband's death was work-related; substantial evidence supported the Commission's decision. Curl v. Quality Aluminum Prods., 996 So. 2d 181, 2008 Miss. App. LEXIS 736 (Miss. Ct. App. 2008).

Compensability is resolved by determining whether the injury is an accidental one under the definition of Miss. Code Ann. § 71-3-3(b), which includes injuries caused by a willful act committed by someone who is a stranger to the employment relationship. Thus, injuries resulting from willful or intentional acts by fellow employees are not "accidental" and are not claims subject to the exclusive remedy provision of the Workers' Compensation Act. Goodman v. Coast Materials Co., 858 So. 2d 923, 2003 Miss. App. LEXIS 1027 (Miss. Ct. App. 2003).

Trial court improperly dismissed an employee's common law tort action, which sought to recover for injuries from a work-related fistfight with the owner of the employer; there is still a recognized right to bring a civil suit against an employer for some intentional torts committed by co-employees. Goodman v. Coast Materials Co., 858 So. 2d 923, 2003 Miss. App. LEXIS 1027 (Miss. Ct. App. 2003).

Trial court erred in dismissing saleswoman's complaint that alleged a management-level employee willfully and intentionally injured her by pulling on her arm in order to take the saleswoman to an office for disciplinary action as the saleswoman's allegations took her complaint out of the province of the Worker's Compensation Act which recognized claims for workers injured in the scope and course of employment through negligent or grossly negligent acts. Blailock v. O'Bannon, 795 So. 2d 533, 2001 Miss. LEXIS 245 (Miss. 2001).

Claim denied where claimant's testimony was contradicted about whether the first claimed incident even occurred, and whether he was actually injured due to the second incident. In addition, there was testimony that claimant had a limp from the first day on the job, which defeated the "injury arising out of and in the course of employment" element as well. Edwards v. Marshall Durbin Farms, Inc., 754 So. 2d 556, 2000 Miss. App. LEXIS 3 (Miss. Ct. App. 2000).

The additional requirement in the restated definition of "injury" in § 71-3-3(b) that the injury result from "an untoward event or events" merely codifies existing law as follows: (1) an unexpected event is by external definition an untoward event and harm resulting from it is covered as an injury; (2) an unexpected result (harm to a worker) of usual work activity is an untoward event and the resulting harm is covered as an injury; (3) if the harm to the worker includes physical results, there is an "accidental injury" if either the event resulting in harm or the harm itself is unexpected; and (4) when an injury with physical results develops gradually from the work and cannot be traced to a single event or to a precise time, the injury meets the requirement of accidental injury if it is causally connected to the work activities or environment and the events are "within a reasonably definite and not too remote period of time." KLLM, Inc. v. Fowler, 589 So. 2d 670, 1991 Miss. LEXIS 768 (Miss. 1991).

The addition of the phrase "in a significant manner" to § 71-3-3(b) states what was already implicit in the workers' compensation law. Requiring the work and injury to be causally connected in a significant manner is nothing more than a requirement that the work connection be supported by substantial evidence as minimally causative of the injury. KLLM, Inc. v. Fowler, 589 So. 2d 670, 1991 Miss. LEXIS 768 (Miss. 1991).

In § 71-3-3, the words "arising out of and in the course of" present an inquiry whether the risk which has given rise to the injury is reasonably incident to the employment, not whether the work was the proximate cause of the injury. Fought v. Stuart C. Irby Co., 523 So. 2d 314, 1988 Miss. LEXIS 86 (Miss. 1988).

The disability contemplated by the Worker's Compensation Act is an occupational disability, not a medical disability. Marshall Durbin, Inc. v. Hall, 490 So. 2d 877, 1986 Miss. LEXIS 2493 (Miss. 1986).

Disability is determined by the extent of actual physical injury and the de facto wage loss. I. Taitel & Son v. Twiner, 247 Miss. 785, 157 So. 2d 44, 1963 Miss. LEXIS 356 (Miss. 1963).

Pain alone, which does not produce incapacity to work, is not compensable. Rivers Constr. Co. v. Dubose, 241 Miss. 527, 130 So. 2d 865, 1961 Miss. LEXIS 371 (Miss. 1961).

For an injury to be compensable under the Workmen's Compensation Law it is not necessary that an accidental injury, as defined in the law, resulted suddenly, nor that it resulted from the application of external force. Tate v. Dr. Pepper Bottling Co., 220 Miss. 311, 70 So. 2d 602, 1954 Miss. LEXIS 442 (Miss. 1954).

24. — Caused by co-employees.

Mississippi Gaming Commission was entitled to summary judgment under the exclusive remedy provision of the Mississippi Workers' Compensation Act, Miss. Code Ann. § 71-3-1 et seq., because a finder of fact could not have concluded that a certified firearms instructor with the Mississippi Gaming Commission possessed actual intent to injure the decedent when the instructor shot and killed the decedent, who was also an instructor with the Commission, during a firearm-training exercise. In the Estate of Gorman v. State, 307 So. 3d 421, 2020 Miss. LEXIS 506 (Miss. 2020).

Finding that the employee's injury did not arise out of his employment was proper where an injury from a third party assault that occurred due to a purely personal vendetta or disagreement did not arise out of the employment pursuant to Miss. Code Ann. § 71-3-7 and Miss. Code Ann. § 71-3-3(b). In the case, the assault arose solely from the employee's personal disagreement with a co-employee concerning a $10 loan. Sanderson Farms, Inc. v. Jackson, 911 So. 2d 985, 2005 Miss. App. LEXIS 700 (Miss. Ct. App. 2005).

Deceased employee's heirs' characterization of an employer's actions and inaction in their attempt to avoid the exclusivity bar of Miss. Code Ann. § 71-3-3(b) could not transform conduct that might well have been grossly negligent or reckless into the kind of "intent to injure" needed to avoid the bar. McCall v. Lockheed Martin Corp., 2005 U.S. Dist. LEXIS 42962 (S.D. Miss. Aug. 26, 2005).

In finding that the exclusivity bar under Mississippi's Workers Compensation Act did not apply to a wrongful death action of an employee, arising from a co-worker's shooting rampage, the court relied on the conclusion reached in prior Mississippi cases that injuries resulting from the willful or intentional acts by fellow employees were not accidental, as defined in Miss. Code Ann. § 71-3-3(b), which followed from the fact that the statutory definition included injuries causes by a willful act committed by someone who was a stranger to the employment relations. Tanks v. Lockheed-Martin Corp., 332 F. Supp. 2d 953, 2004 U.S. Dist. LEXIS 17123 (S.D. Miss. 2004).

Employee who was assaulted in her apartment parking lot by her co-worker and roommate was not entitled to compensation because she was not injured by a willful act directed against her because of her employment and while so employed and working on the job. Hawkins v. Treasure Bay Hotel & Casino, 813 So. 2d 757, 2001 Miss. App. LEXIS 462 (Miss. Ct. App. 2001).

Under §§ 71-3-9 and 71-3-3(b), an employee's claim for damages resulting from false imprisonment by her employer was not barred by the exclusivity of the remedies available under the Workmen's Compensation Act, since the Act governs only injuries compensable under it, since injuries sustained as the result of a false imprisonment are not the result of accident, but rather arise from a willful act, which injuries are compensable under the Act only if caused by the willful act of a third person, and since the term "third person" refers either to a stranger to the employer-employee relationship, or to a fellow employee acting outside the course and scope of his employment; thus, a declaration alleging that an employee was falsely imprisoned by the head of her employer's security department, and questioned concerning an amount of money missing from her department, was improperly dismissed. Miller v. McRae's, Inc., 444 So. 2d 368, 1984 Miss. LEXIS 1577 (Miss. 1984).

25. — Caused by third persons.

Finding that workers' compensation benefits were wrongfully denied to the employee was appropriate because the case was doubtful as to whether the existence of any real or imagined relationship between the former coworker and the employee was the sole cause of the employee's injuries; doubtful claims were to be resolved in favor of compensation. Int'l Staff Mgmt. & Legion Ins. Co. v. Stephenson, 46 So. 3d 367, 2010 Miss. App. LEXIS 128 (Miss. Ct. App.), cert. denied, 49 So. 3d 636, 2010 Miss. LEXIS 564 (Miss. 2010).

In a workers' compensation death benefits case, the decedent employee's wife was improperly awarded benefits because the extended escapade the employee (a trucker) went on at a truck stop bar exposed him to risks that could not reasonably be viewed as being associated with the trucking business or arising out of or in the course of his employment when he was shot by a fellow bar patron. Total Transp., Inc. v. Shores, 968 So. 2d 456, 2006 Miss. App. LEXIS 874 (Miss. Ct. App. 2006), aff'd, 968 So. 2d 400, 2007 Miss. LEXIS 525 (Miss. 2007).

Under §§ 71-3-9 and 71-3-3(b), an employee's claim for damages resulting from false imprisonment by her employer was not barred by the exclusivity of the remedies available under the Workmen's Compensation Act, since the Act governs only injuries compensable under it, since injuries sustained as the result of a false imprisonment are not the result of accident, but rather arise from a willful act, which injuries are compensable under the Act only if caused by the willful act of a third person, and since the term "third person" refers either to a stranger to the employer-employee relationship, or to a fellow employee acting outside the course and scope of his employment; thus, a declaration alleging that an employee was falsely imprisoned by the head of her employer's security department, and questioned concerning an amount of money missing from her department, was improperly dismissed. Miller v. McRae's, Inc., 444 So. 2d 368, 1984 Miss. LEXIS 1577 (Miss. 1984).

A convenience store clerk, who was raped in the course of a store robbery, was injured as a consequence of conditions brought about by risks of the work environment, and thus her exclusive remedy was under Miss Code § 71-3-9. Williams v. Munford, Inc., 683 F.2d 938, 1982 U.S. App. LEXIS 16296 (5th Cir. Miss. 1982).

In a workmen's compensation case arising out of the murder of a taxicab driver who had been dispatched to pick up a fare between one and two hours before his body was discovered by the police about a block away from his cab, the victim's dependents were properly awarded benefits where they had presented facts from which the Workmen's Compensation Commission could reasonably infer that the driver had been engaged in his employer's business at the time of the attack, and that his employment had exposed him to the hazard of robbery or assault. Johnson v. Roundtree, 406 So. 2d 810, 1981 Miss. LEXIS 2298 (Miss. 1981).

The dependent of a deceased employee of a service station was properly granted workmen's compensation benefits where the deceased employee had been shot and killed by the husband of the deceased employee's supervisor, who was also a supervisor at the service station, and where the evidence supported the conclusion that the deceased employee had thought that he was involved in a work-related activity when he was called over to the husband's automobile, despite the fact that the confrontation arose because of the employee's relationship with the wife. Kerr-McGee Corp. v. Hutto, 401 So. 2d 1277, 1981 Miss. LEXIS 2069 (Miss. 1981).

A route salesman who stopped to assist an apparently disabled motorist and who was rendered permanently and totally disabled when the motorist struck him with a gun was entitled to workmen's compensation, despite the employer's contention that his injuries did not arise out of and in the course of his employment; an employer may reasonably foresee that his traveling employee will stop to aid a distressed motorist when implored to do so, and since the present claimant's injury resulted from a humanitarian act which was literally thrown into his path because of his employment, the employee was entitled to compensation. The singular purpose pervading the Workmen's Compensation Act is to promote the welfare of laborers within the state (§ 71-3-1), and it should be construed fairly to further its humanitarian aims. Big "2" Engine Rebuilders v. Freeman, 379 So. 2d 888, 1980 Miss. LEXIS 1834 (Miss. 1980).

Evidence that the employee was murdered by a jilted suitor and that the only connection between her employment and the cause of her death was that she was on duty at the time she was shot and was merely informing the slayer of the rules of the telephone company prohibiting visitors in the operating room at the telephone exchange, and immediately after shooting the employee the slayer turned a pistol upon himself and committed suicide, failed to establish that the employee was killed because of her employment, since the act of the slayer in committing suicide negatived the idea that he killed the employee because of her employment, and thus the employee was not within the protection of the Estate of West v. Southern Bell Tel. & Tel. Co., 228 Miss. 890, 90 So. 2d 1, 1956 Miss. LEXIS 578 (Miss. 1956).

26. — Other particular causes of injuries.

Mississippi Workers' Compensation Commission did not err in reversing the administrative judge's determination that the claimant was acting in the scope of his employment when he rode toward his house after lunch to switch from his motorcycle to his jeep before returning to his office because he was on a personal errand to exchange vehicles unconnected to a business purpose for his employer; he had a fixed place of employment; while aspects of his work included travel to service locations, and he was entitled to reimbursement for that travel, his position was not comparable to that of a truck driver or traveling salesman; and travel to lunch and his personal errand home to exchange vehicles were outside the scope of his employment. Bennett v. Miss. State Dep't of Health, 211 So. 3d 773, 2016 Miss. App. LEXIS 474 (Miss. Ct. App. 2016).

Substantial evidence supported the Workers' Compensation Commission's award of benefits because the evidence showed (1) travel was a large part of the employee's work, and (2) the employee was returning home from such travel engaged in to perform work for an employer when the employee was injured in an accident. Choctaw Resort Dev. Enter. v. Applequist, 161 So. 3d 1134, 2015 Miss. App. LEXIS 214 (Miss. Ct. App. 2015).

Employee was not entitled to workers' compensation benefits for injuries arising out of an accident that occurred during her lunch hour while the employee was crossing a public street because the employee was not a traveling employee, the personal comfort doctrine was not applicable, and the threshold doctrine was not applicable. The employee's injuries did not take place during the course of her employment. Bouldin v. Miss. Dep't of Health, 1 So. 3d 890, 2008 Miss. App. LEXIS 437 (Miss. Ct. App. 2008), cert. denied, 999 So. 2d 1280, 2009 Miss. LEXIS 11 (Miss. 2009).

Substantial evidence supported the determination that the claimant's asthma was work-related where two physicians testified that the claimant's asthma was aggravated by work exposure to chemicals. International Paper Co. v. Greene, 773 So. 2d 399, 2000 Miss. App. LEXIS 557 (Miss. Ct. App. 2000).

The claimant suffered injury as defined in subsection (b) of this section when he had a heart attack while on the job because job related stress adversely affected, contributed to, and aggravated the claimant's medical condition as he routinely disposed of his duties. City of Laurel v. Blackledge, 1999 Miss. App. LEXIS 333 (Miss. Ct. App. June 22, 1999), sub. op., 755 So. 2d 573, 2000 Miss. App. LEXIS 88 (Miss. Ct. App. 2000).

An employee's injury did not arise out of and in the course of his employment as a sack boy at a grocery store where the injury occurred when a firecracker which the employee had been given by another worker exploded in his hand, and the store had a policy of no foul play, which included fireworks, so that the employee's conduct was against the rules of the business; the accident and injury were the result of the employee's own misuse of and involvement with an object which was prohibited and outside the scope of the employee's employment, and therefore the injury sustained was not compensable. Mathis v. Nelson's Foodland, Inc., 606 So. 2d 101, 1992 Miss. LEXIS 49 (Miss. 1992).

The evidence was sufficient to support a finding by the Workers' Compensation Commission that noise at an employee's work site was a contributing, precipitating, or aggravating factor in the production of Meniere's Syndrome, even though the etiology of Meniere's Syndrome is largely unknown, where there was substantial evidence that exposure to high intensity noise for a period of years at the work site contributed to, aggravated or accelerated the employee's condition, and this evidence was not controverted by any direct medical evidence. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250, 1991 Miss. LEXIS 763 (Miss. 1991).

Injuries sustained by employee in airplane crash arose out of and in course of employment where employer ordered employee into plane so that employee could be taken to work location. National Aviation Underwriters v. Caldwell, 689 F. Supp. 639, 1988 U.S. Dist. LEXIS 8258 (N.D. Miss. 1988).

27. — Mental injuries.

Denial of workers' compensation benefits for an alleged disabling mental disability was appropriate because the employee failed to present any medical evidence establishing a causal connection between her employment and the alleged injury while the employer's expert testified that his evaluation of the employee indicated that the employee did not suffer any work-related injury. Lacy v. Jackson State Univ., 120 So. 3d 1044, 2013 Miss. App. LEXIS 549 (Miss. Ct. App. 2013).

Although a clear and convincing evidence standard was inapplicable to a worker's claim of mental injury allegedly resulting from physical injury, the claim was properly denied because there was substantial evidence to support a finding that the worker failed to prove a causal connection between the mental and physical injuries even by "clear evidence." Daniels v. Peco Foods of Miss., Inc., 980 So. 2d 360, 2008 Miss. App. LEXIS 244 (Miss. Ct. App. 2008).

Workers' compensation claimant could not receive compensation for his nervous breakdown where there was conflicting medical testimony as to whether his condition was work-related under Miss. Code. Ann. § 71-3-3 (b), and claimant's testimony of longer workdays and higher pressure during period preceding his breakdown was uncorroborated. McElveen v. Croft Metals, Inc., 915 So. 2d 14, 2005 Miss. App. LEXIS 479 (Miss. Ct. App. 2005).

Appellate court held that an agency determination that a worker who claimed that she was totally disabled from performing her job as a retail store manager as a result of headaches and depression allegedly caused by extremely stressful working conditions over a number of years had not shown a compensable mental illness for the purposes of workers' compensation was not clearly erroneous; worker failed to show that her condition was the result of working conditions that were different from those experienced by other workers or were caused or aggravated by a work-related physical injury. Kirk v. K-Mart Corp., 838 So. 2d 1007, 2003 Miss. App. LEXIS 101 (Miss. Ct. App. 2003).

Employee's claim for disability benefits for a mental injury was properly denied as insufficient evidence was presented to prove a causal connection between the employee's work and her mental injuries, namely, her long history of battling depression. Page v. Zurich Am. Ins. Co., 825 So. 2d 721, 2002 Miss. App. LEXIS 498 (Miss. Ct. App. 2002).

A claimant failed to make the requisite showing that her mental condition was causally connected to her employment where 2 doctors testified that the claimant had suffered from psychological disorders prior to the incident alleged to have caused her mental injury, the Workers' Compensation Commission found the testimony of another doctor, who diagnosed the claimant as having severe post-traumatic stress disorder and major depression with some psychotic symptoms, to be unconvincing, and the incident alleged to have caused the claimant's mental injury-a private meeting with her supervisor during which the supervisor threatened to fire her-was not an "untoward event." Bates v. Countrybrook Living Center, 609 So. 2d 1247, 1992 Miss. LEXIS 589 (Miss. 1992).

The evidence was sufficient to support the Workers' Compensation Commission's finding that an employee's mental disability was caused by a deliberate course of conduct by his employer and that there was nothing in his psychological background to suggest a pre-existing personality disorder, so that the stresses to which the employee was subjected were "more than the ordinary incidents of employment" and were "untoward events or unusual occurrences" culminating in his subsequent disability, where a psychiatrist who treated the employee for over 2 years testified that the employee was psychologically disabled and that his work played a significant part in causing it, and testimony from the employee, the employee's wife, and fellow employees established a protracted pattern by the employer to put pressure and stress upon the employee. Borden, Inc. v. Eskridge, 604 So. 2d 1071, 1991 Miss. LEXIS 795 (Miss. 1991).

In order to be compensable, a mental injury, unaccompanied by physical trauma, must have been caused by something more than the ordinary incidents of employment. Fought v. Stuart C. Irby Co., 523 So. 2d 314, 1988 Miss. LEXIS 86 (Miss. 1988).

Worker's injury resulting from hysterical conversion reaction when employer, through agent, deliberately creates heightened expectation of advancement in particular worker and then triggers reaction by doing something worker could reasonably perceive as betrayal is compensable. Brown & Root Constr. Co. v. Duckworth, 475 So. 2d 813, 1985 Miss. LEXIS 2237 (Miss. 1985).

Mental injury of worker unaccompanied by physical trauma is not directly linked to untoward event, unusual occurrence, accident or injury incident to employment, as required for worker to be entitled to worker's compensation benefits, where worker claims that mental injury results from termination of worker due to business conditions eliminating need for worker's employment; if worker were entitled to benefits at all, it would only be to apportioned benefits if worker has long history of mental and emotional disorders prior to termination. Smith & Sanders, Inc. v. Peery, 473 So. 2d 423, 1985 Miss. LEXIS 2159 (Miss. 1985).

Incapacity for work due to mental condition not resulting from work-connected injury is not compensable. International Paper Co. v. Wilson, 243 Miss. 659, 139 So. 2d 644, 1962 Miss. LEXIS 391 (Miss. 1962).

28. —Occupational diseases.

Physicians' testimony that smoking would not have caused the fibrotic scarring to the lungs that the employee suffered, was not wholly conclusive, but was supported by substantial evidence, as was evidence of the employee's decreased earning capacity, because the employee required the assistance of a co employee for more strenuous tasks; thus, the employee's award of benefits for permanent disability and loss of wage-earning capacity was proper. Cooper Tire & Rubber Co. v. Harris, 837 So. 2d 789, 2003 Miss. App. LEXIS 79 (Miss. Ct. App. 2003), amended, 2003 Miss. App. LEXIS 301 (Miss. Ct. App. Apr. 8, 2003).

Disability resulting from an occupational disease is not compensable under the Workmen's Compensation Law. Heckford v. International Paper Co., 242 Miss. 337, 135 So. 2d 415, 1961 Miss. LEXIS 564 (Miss. 1961).

Arteriosclerosis is not an occupational disease. Capital Broadcasting Co. v. Wilkerson, 240 Miss. 64, 126 So. 2d 242, 1961 Miss. LEXIS 430 (Miss. 1961).

29. —Other particular injuries.

Denial of the employee's claim for medical and disability benefits was appropriate under Miss. Code Ann. § 71-3-3(b) because the employee's medical experts were unable to ascertain to a reasonable degree of medical probability that the employee's lung and heart problems were the result of his having been exposed to the cleaner. Further, the employee provided inconsistent accounts with regard to the incident itself. Langford v. Southland Trucking, LLC, 30 So. 3d 1266, 2010 Miss. App. LEXIS 142 (Miss. Ct. App. 2010).

Where the employees' injuries arose out of and in the course of employment, under Miss. Code Ann. § 71-3-3(b), their claims of battery and intentional infliction of emotional distress against the employer were not precluded by the Mississippi Workers' Compensation Act, Miss. Code Ann. § 71-3-9, as a matter of law. Franklin Corp. v. Tedford, 2009 Miss. LEXIS 169 (Miss. Apr. 16, 2009), sub. op., 18 So. 3d 215, 2009 Miss. LEXIS 426 (Miss. 2009).

In a case where an employee fell over dead from a heart attack while waiting to get trained on a new machine, several benefit claimants were not entitled to recover workers' compensation benefits under Miss. Code Ann. § 71-3-3(b) because there was no causal connection shown; the employee did not have any unusual assignments or work conditions, and the medical evidence established that the death was not work-related. Harbin v. Outokumpu Heatcraft USA, LLC, 958 So. 2d 1260, 2007 Miss. App. LEXIS 395 (Miss. Ct. App. 2007).

Where several doctors opined that an employee's repetitive act of reaching for a time clock 300 to 400 times per day aggravated a pre-existing condition, temporary total disability benefits were properly awarded due to Miss. Code Ann. § 71-3-3(b). Casino Magic v. Nelson, 958 So. 2d 224, 2007 Miss. App. LEXIS 41 (Miss. Ct. App. 2007).

Evidence was sufficient to establish that the claimant had a permanent medical impairment attributable to his coronary condition and that the claimant's coronary artery disease and the associated blockage were related to the stress of his employment as a firefighter because the claimant's physician noted that the job the claimant worked was stressful and stated that the stress of his job had a real contributing factor and that the claimant continued to be unable to work and should be considered totally and permanently disabled. City of Laurel v. Blackledge, 755 So. 2d 573, 2000 Miss. App. LEXIS 88 (Miss. Ct. App. 2000).

There was substantial evidence supporting a finding by the Workers' Compensation Commission that a claimant's impairment was a whole body injury rather than a schedule numbered injury only, where a physician identified the claimant's malady as Meniere's Syndrome, and he testified that Meniere's Syndrome is "an inner ear dysfunction that appears to be lifelong in nature" and that it affected the entire body in that, in addition to a loss of hearing, it involved a balance dysfunction affecting the claimant's activities of daily living, both occupationally and socially. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250, 1991 Miss. LEXIS 763 (Miss. 1991).

An injury sustained by an employee when he fell during work, as a result of alcohol withdrawal syndrome, and struck the employer's concrete floor, constituted an "injury" as defined in § 71-3-3; any injury sustained by an employee resulting from a fall upon a work premise floor is a confrontation with a condition of employment which contributed to the employee's injury and "arises out of and in the course of employment" as a matter of law. Smith v. Container General Corp., 559 So. 2d 1019, 1990 Miss. LEXIS 192 (Miss. 1990).

Lordosis and obesity held not such physical handicap as to require apportionment of compensation to employee who twisted knee in turning to pick up bundle. I. Taitel & Son v. Twiner, 247 Miss. 785, 157 So. 2d 44, 1963 Miss. LEXIS 356 (Miss. 1963).

30. — Proof of injuries.

Mississippi Workers' Compensation Commission erred in overturning an administrative law judge's ruling that an employer owed an employee disability payments because the employee proved a work-related injury, he suffered a loss of wage-earning capacity resulting in permanent-partial disability, and the injury related to his disability; the employer failed to rebut the employee's prima facie case of disability. Ladner v. Zachry Constr., 2017 Miss. App. LEXIS 528 (Miss. Ct. App. Sept. 5, 2017).

Workers' Compensation Commission properly affirmed the denial of benefits to an employee because the employee did not seek medical treatment for a month after developing knee pain, told a nurse at the hospital that he had injured his knee while running and denied any work-related injury, and the medical testimony was insufficient to establish a work-related injury. Johnson v. Sysco Food Servs., 122 So. 3d 159, 2013 Miss. App. LEXIS 628 (Miss. Ct. App. 2013).

Mississippi Workers' Compensation Commission's decision that a worker suffered an accidental injury, pursuant to Miss. Code Ann. § 71-3-3(b), within the course and scope of the worker's employment, pursuant to Miss. Code Ann. § 71-3-1(3), was not contrary to the overwhelming weight of the evidence because, although no one saw the worker pick a tire up and injure the worker's back, the worker informed the worker's supervisor immediately following the injury, and the supervisor testified that the worker emerged from beneath a van, stood up, and stated that the worker's back was bothering the worker. The only contradictory evidence presented was by the store manager, who claimed that the worker never said that the worker hurt the worker's back; however, the manager did admit that the worker complained of the worker's back hurting, and the administrative judge found that the testimony of the worker was definitely more credible than that of the store manager. Performance Tire & Wheel, Inc. v. Rhoads, 113 So. 3d 1262, 2013 Miss. App. LEXIS 195 (Miss. Ct. App. 2013).

Court of appeals erred in finding that an employee made a prima facie showing of permanent total disability and in awarding her compensation because the substantial evidence supported a finding that the employee did not have a permanent, total disability, and there was substantial evidence that the lack of employment was not due to the employee's injury; the employee's termination notice stated that she was being terminated due to her probationary status rather than as a consequence of her injury, and the Mississippi Workers' Compensation Commission's conclusion that the employee was unable to find employment due to the depressed economic conditions in the area where she lived and not to the injury itself was based on substantial evidence presented by the employee's expert. he employee was terminated from her position with the group home shortly after her accident. Lott v. Hudspeth Ctr., 26 So. 3d 1044, 2010 Miss. LEXIS 11 (Miss. 2010).

Where there was conflicting medical evidence regarding a claimant's lumbar condition and her need for lumbar spine injury, an appellate court could not say that the Workers' Compensation Commission's decision to deny benefits was arbitrary and capricious. Washington v. Woodland Vill. Nursing Home, 25 So. 3d 341, 2009 Miss. App. LEXIS 108 (Miss. Ct. App. 2009), cert. denied, 24 So. 3d 1038, 2010 Miss. LEXIS 2 (Miss. 2010).

Substantial evidence supported the Mississippi Workers' Compensation Commission's decision that the employee sustained a permanent medical and occupational disability as a result of her lower back injury under Miss. Code Ann. § 71-3-3(i) because the second functional capacity evaluation concluded that the employee was not able to return to her regular duties and that she was only able to lift at the sedentary range. Whirlpool Corp. v. Wilson, 952 So. 2d 267, 2006 Miss. App. LEXIS 844 (Miss. Ct. App. 2006).

Employee proved that she had a loss of wage-earning capacity under Miss. Code Ann. § 71-3-3(i) because she testified that her supervisors required her to return to full duty on the assembly line or leave and that after she resigned she contacted 11 different businesses seeking employment without success and that she registered with the Mississippi Employment Security Commission (now Department of Employment Security). Whirlpool Corp. v. Wilson, 952 So. 2d 267, 2006 Miss. App. LEXIS 844 (Miss. Ct. App. 2006).

Employee's injury was compensable under Miss. Code Ann. § 71-3-3(b) because there was no doubt that a doctor's expert medical opinion supported the Workers' Compensation Commission's decision regarding the employee's injury; while there was a conflict in expert medical opinion, the appellate court was not permitted to resolve conflicts in the evidence based on its mandated presumption that the commission resolved all such conflicts. Union Camp Corp. v. Hall, 955 So. 2d 363, 2006 Miss. App. LEXIS 696 (Miss. Ct. App. 2006), cert. dismissed, 956 So. 2d 228, 2007 Miss. LEXIS 215 (Miss. 2007).

In a workers' compensation case, a claimant's treating physician stated in his deposition that the claimant's cerebral hemorrhage was caused by poorly controlled hypertension and could not be related to the stress of his employment to a reasonable degree of medical probability; there was nothing in the record to suggest that the opinion of the treating physician was not credible evidence upon which the Mississippi Workers' Compensation Commission was entitled to rely. Also, the Commission acted within its discretion in discounting another doctor's testimony since that doctor had not examined the claimant or even spoken with him, and had failed to review all of the pertinent medical records; therefore, the Commission's decision denying the claimant workers' compensation benefits was neither arbitrary nor capricious as the treating physician's testimony provided substantial support for the Commission's finding that the claimant had failed to show that his intracerebral hemorrhage was caused or contributed to by the stress he experienced in his employment as a deputy sheriff. Mabry v. Tunica County Sheriff's Dep't, 911 So. 2d 1038, 2005 Miss. App. LEXIS 667 (Miss. Ct. App. 2005).

Appellate court affirmed a determination that a claimant was not entitled to partial permanent disability benefits under Miss. Code Ann. Miss. Code Ann. § 71-3-3(i) as the claimant failed to establish that he had sought similar work as a tire builder and that the employer had refused to rehire or reinstate him. Havard v. Titan Tire Corp., 919 So. 2d 995, 2005 Miss. App. LEXIS 429 (Miss. Ct. App. 2005).

Medical testimony from the employee's treating physicians supported the permanence of his disability as follows: (1) one physician testified that he had suffered a 20 percent permanent medical impairment to his entire body due to his neck injury' (2) a second physician restricted him to medium duty based on clinical examinations, diagnostic tests, and his complaints of pain; (3) three years after the accident, the employee was further restricted to light duty; and (4) a third physician concluded that he would "never be able to return to duty without severe spasm." The record was clear that he was unable to return to his work as a diesel mechanic due to his injury, and that he had also incurred a 50 percent reduction in his earning capacity given his pain, his age, and his occupational history. Bryan Foods, Inc. v. White, 913 So. 2d 1003, 2005 Miss. App. LEXIS 266 (Miss. Ct. App.), cert. denied, 921 So. 2d 344, 2005 Miss. LEXIS 710 (Miss. 2005).

Trial court did not err in compensating an employee for a cervical injury; the injury was compensable under Miss. Code Ann. § 71-3-3(b) because it was work-related, there was substantial evidence of the injury, and the employee's claim of disability was supported by medical findings as required by Miss. Code Ann. § 71-3-3(i). Howard Indus. v. Robinson, 846 So. 2d 245, 2002 Miss. App. LEXIS 574 (Miss. Ct. App. 2002).

The Workers' Compensation Commission's denial of benefits to an asthmatic employee would be reversed, even though a physician testified that there was not a "strong work-related causal connection between [the employee's] pneumonia and emphysema," where medical testimony established a causal connection between the exacerbation of her pre-existing respiratory problems and the inhalation of irritants in her work environment, and the employee's uncontroverted testimony of the onset pain in her side and back along with shortness of breath while she was performing her job duties established that her injury arose out of and in the course of her employment. Hedge v. Leggett & Platt, 641 So. 2d 9, 1994 Miss. LEXIS 362 (Miss. 1994).

The circuit court did not err in reversing the Workers' Compensation Commission's finding that a claimant with a back injury had reached maximum medical improvement and suffered no permanent disability where there was evidence that the claimant had 2 ruptured discs surgically removed, specialists who initially concluded that the claimant had no ruptured discs did not later examine him after the discovery of the ruptured discs was made, and the employer failed to show that the claimant suffered any disassociated intervening injury which caused the ruptured discs, their surgical removal and the resulting disability. Marshall Durbin Cos. v. Warren, 633 So. 2d 1006, 1994 Miss. LEXIS 33 (Miss. 1994).

A finding that a claimant was not entitled to permanent disability benefits because his disability, which arose from slippage in the spine, was attributable entirely to preexisting spondylolisthesis was not supported by substantial evidence where there was conflicting medical testimony from 2 treating physicians as to the cause of the claimant's permanent disability and neither physician could determine how and when the slippage actually occurred, since close questions of compensability should be resolved in favor of the claimant, and the Workers' Compensation Act should be liberally construed to carry out its remedial purpose. McNeese v. Cooper Tire & Rubber Co., 627 So. 2d 321, 1993 Miss. LEXIS 444 (Miss. 1993).

Certainty is not a requisite in deciding a workers' compensation case, but, rather, the reviewing court considers reasonable medical probabilities. In other words, medical findings sufficient to show a compensable disability are not required to be precise, complete and unequivocal. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250, 1991 Miss. LEXIS 763 (Miss. 1991).

The evidence supported a finding that an employee suffered a 100 percent industrial loss of use of his left leg, rather than only a 40 percent loss, even though the employee's treating physician testified that the employee had a 40 percent permanent partial impairment of his left leg, where the physician also testified that the employee would be limited in activities such as standing for long periods, climbing ladders and stairs, and carrying heavy loads but that he could work in sedentary types of positions where he could sit to do the work, the employee was a 43-year-old man who dropped out of school during the 10th grade, from that time until the time of his injury he worked in construction, did carpentry work, and delivered furniture, at the time of the injury he was employed at a furniture company where he did not perform any one particular job but was moved around from job to job as needed, some of the jobs that he performed at the company included working in the sanding department, cutting out chest-of-drawer tops, and working in the mill, the employee testified that after his injury he could not do carpentry work and could not do any jobs which required him to stand but he could sand edges and use a table saw, and he testified that he continued to have problems with his leg every day, including swelling and pain. McGowan v. Orleans Furniture, Inc., 586 So. 2d 163, 1991 Miss. LEXIS 596 (Miss. 1991).

Claimant has burden of proving that he sustained an accidental injury arising out of and in the course and scope of his employment, and that the injury caused the disability for which he is claiming benefits. Sonford Products Corp. v. Freels, 495 So. 2d 468, 1986 Miss. LEXIS 2658 (Miss. 1986), overruled, Bickham v. Department of Mental Health, 592 So. 2d 96, 1991 Miss. LEXIS 978 (Miss. 1991).

The Workers' Compensation Commission's findings that a truck driver sustained a compensable injury and that the repeated trauma of his work aggravated a pre-existing non-work-related condition were supported by substantial evidence where the worker's treating physician and the physician for the employer who conducted a physical examination required by the Department of Transportation had released the worker to return to work following treatment for a non-work-related back injury and the treating physician testified that the worker had a "chronically sore joint in the back that was apparently being aggravated by the nature of his work as a long-distance truck driver." Miller Transporters, Inc. v. Guthrie, 554 So. 2d 917, 1989 Miss. LEXIS 495 (Miss. 1989).

Worker's Compensation Commission's finding that claimant had suffered a work-related injury, and was occupationally disabled as a result thereof, was sustained by medical and lay evidence. Delta Drilling Co. v. Cannette, 489 So. 2d 1378, 1986 Miss. LEXIS 2472 (Miss. 1986).

Disability determination must be supported by medical evidence. Delta Drilling Co. v. Cannette, 489 So. 2d 1378, 1986 Miss. LEXIS 2472 (Miss. 1986).

Though disability and extent thereof must be supported by medical findings, compensation may be allowed for disabling pain in absence of positive medical testimony and objective medical findings as to any physical cause. Penrod Drilling Co. v. Etheridge, 487 So. 2d 1330, 1986 Miss. LEXIS 2455 (Miss. 1986).

Testimony of claimant's physician giving opinion to reasonable medical certainty that claimant has experienced injury resulting in claimant being 100 percent disabled is sufficient to support finding of disability, notwithstanding contradictory testimony by employer's physician, where claimant's physician has examined and treated claimant on 9 or 10 occasions and employer's physician has examined claimant on only one occasion, some 10 months after most recent examination by claimant's physician. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584, 1985 Miss. LEXIS 2197 (Miss. 1985).

Medical testimony that a claimant's duties as a meat cutter, which required him to spend 65 per cent of his time lifting and carrying heavy food products, probably aggravated a non-work originating disease contracted by the claimant, warranted a determination that the disease constituted an accidental injury within the meaning of the Workmen's Compensation Law and supported an award of benefits. Kroger Co. v. Orr, 230 So. 2d 798, 1970 Miss. LEXIS 1564 (Miss. 1970).

Finding of disability as the result of a fall held supported by substantial evidence. Forest Constructors, Inc. v. Tadlock, 248 Miss. 460, 160 So. 2d 214, 1964 Miss. LEXIS 275 (Miss. 1964).

Evidence of lay witnesses as to extent of disability held to support award, notwithstanding medical evidence of less disability. McManus v. Southern United Ice Co., 243 Miss. 576, 138 So. 2d 899, 1962 Miss. LEXIS 378 (Miss. 1962).

That workmen's compensation claimant had represented to disability insurer that his injury was not covered by workmen's compensation, while not conclusive, is a circumstance to be considered. Parker v. United Gas Corp., 240 Miss. 351, 127 So. 2d 438, 1961 Miss. LEXIS 468 (Miss. 1961).

In order to have a compensable claim, it was not necessary for the claimants to show that the deceased had a pre-existing heart condition or other physical infirmity which could have been aggravated by the work of the deceased. Pennington v. Smith, 232 Miss. 775, 100 So. 2d 569, 1958 Miss. LEXIS 328 (Miss. 1958).

31. Going and coming rule.

Under an exception to the coming-and-going rule, the Mississippi Workers' Compensation Commission did not err in reversing the administrative judge's determination that the claimant was acting in the scope of his employment when he rode toward his house after lunch to switch from his motorcycle to his jeep before returning to his office because, while fulfilling certain work orders required the use of an enclosed vehicle to transport equipment, the claimant made a personal decision to transfer vehicles, and the trip home was not necessary to facilitate his scheduled work assignments; and the claimant himself testified that his original plan was to drive straight from lunch to his office. Bennett v. Miss. State Dep't of Health, 211 So. 3d 773, 2016 Miss. App. LEXIS 474 (Miss. Ct. App. 2016).

Under an exception to the coming-and-going rule, the Mississippi Workers' Compensation Commission did not err in reversing the administrative judge's determination that the claimant was acting in the scope of his employment when he rode toward his house after lunch to switch from his motorcycle to his jeep before returning to his office because, while the claimant was eligible for reimbursement for mileage incurred driving from his office to a work site, or from a work site to his office, he conceded that he would not be entitled to seek reimbursement for driving to lunch or for mileage on a personal errand between service calls. Bennett v. Miss. State Dep't of Health, 211 So. 3d 773, 2016 Miss. App. LEXIS 474 (Miss. Ct. App. 2016).

Where an employee, a truck driver, was struck by a drunk driver while driving home in a personal vehicle to take a shower between deliveries, although the employee was not a traveling employee at the time of the accident, the employee met an exception to the "going and coming" rule by performing an employment duty while at home because, inter alia, (1) the employee followed the direction of the employer and attempted to save the company money by taking a shower at home, and (2) while the employee was on a delivery route, the employee was normally paid for the time the employee took a shower and reimbursed for the costs of the showers. Lane v. Hartson-Kennedy Cabinet Top Co., 981 So. 2d 1063, 2008 Miss. App. LEXIS 284 (Miss. Ct. App. 2008).

OPINIONS OF THE ATTORNEY GENERAL

A person performing work as part of his sentence for a criminal conviction is not an "employee" according to this definition as there is no "contract of hire". Donald, Nov. 20, 1991, A.G. Op. #91-0866.

Juror does not serve under "any contract of hire or apprenticeship" under Miss. Code Section 71-3-3(d); juror is required to perform jury duty by law and not by any contract with state or county; therefore, jurors are not covered by Workers' Compensation Act. Trapp, Mar. 12, 1993, A.G. Op. #93-0133.

Pursuant to Section 71-3-3(d), individuals serving as members on a board and receiving travel expenses and per diem are simply being reimbursed for their expenses and are not receiving compensation for their services to that board. Thus, those individuals are not considered employees for purposes of workers' compensation. Ranck, October 13, 1995, A.G. Op. #95-0691.

Even though individuals are elected rather than hired under a contract of employment, elected officials receive a salary and perform official duties on behalf of the municipality, and this being the case, are to be considered "employees" of the municipality for purposes of workers' compensation coverage. Tullos, Dec. 19, 2003, A.G. Op. 03-0580.

In the absence of any compensation, volunteer firemen are not "employees" of the municipality, and would not be entitled to workers' compensation coverage. However, whether the volunteer is compensated by the municipality should not be the sole consideration, and the situation in each municipality should be reviewed independently. Tullos, Dec. 19, 2003, A.G. Op. 03-0580.

A contract worker who falls within the statutory definition of "employee", as provided in Section 71-3-3, would be considered an employee for purposes of workers' compensation coverage. Walker, Nov. 10, 2006, A.G. Op. 06-0563.

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Workers' compensation: third-party tort liability of corporate officer to injured workers. 76 A.L.R.4th 365.

Ownership interest in employer business as affecting status as employee for workers' compensation purposes. 78 A.L.R.4th 973.

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Jurors as within coverage of workers' compensation acts. 13 A.L.R.5th 444.

Employer's liability to employee or agent for injury or death resulting from assault or criminal attack by third person. 40 A.L.R.5th 1.

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Right to workers' compensation for emotional distress or like injury suffered by claimant as a result of sudden emotional stimuli involving personnel action. 82 A.L.R.5th 149.

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34 Am. Jur. Proof of Facts 2d 483, Inherently Dangerous Nature of Work Performed by Independent Contractor.

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§ 71-3-5. Application.

The following shall constitute employers subject to the provisions of this chapter:

Every person, firm and private corporation, including any public service corporation but excluding, however, all nonprofit charitable, fraternal, cultural, or religious corporations or associations, that have in service five (5) or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied.

Any state agency, state institution, state department, or subdivision thereof, including counties, municipalities and school districts, or the singular thereof, not heretofore included under the Workers' Compensation Law, may elect, by proper action of its officers or department head, to come within its provisions and, in such case, shall notify the commission of such action by filing notice of compensation insurance with the commission. Payment for compensation insurance policies so taken may be made from any appropriation or funds available to such agency, department or subdivision thereof, or from the general fund of any county or municipality.

From and after July 1, 1990, all offices, departments, agencies, bureaus, commissions, boards, institutions, hospitals, colleges, universities, airport authorities or other instrumentalities of the "state" as such term is defined in Section 11-46-1, Mississippi Code of 1972, shall come under the provisions of the Workers' Compensation Law. Payment for compensation insurance policies so taken may be made from any appropriation or funds available to such office, department, agency, bureau, commission, board, institution, hospital, college, university, airport authority or other instrumentality of the state.

From and after October 1, 1990, counties and municipalities shall come under the provisions of the Workers' Compensation Law. Payment for compensation insurance policies so taken may be made from any funds available to such counties and municipalities.

From and after October 1, 1993, all "political subdivisions," as such term is defined in Section 11-46-1, Mississippi Code of 1972, except counties and municipalities shall come under the provisions of the Workers' Compensation Law. Payment for compensation insurance policies so taken may be made from any funds available to such political subdivisions.

From and after July 1, 1988, the "state" as such term is defined in Section 11-46-1, Mississippi Code of 1972, may elect to become a self-insurer under the provisions elsewhere set out by law, by notifying the commission of its intent to become a self-insurer. The cost of being such a self-insurer, as provided otherwise by law, may be paid from funds available to the offices, departments, agencies, bureaus, commissions, boards, institutions, hospitals, colleges, universities, airport authorities or other instrumentalities of the state.

The Mississippi Transportation Commission, the Department of Public Safety and the Mississippi Industries for the Blind may elect to become self-insurers under the provisions elsewhere set out by law by notifying the commission of their intention of becoming such a self-insurer. The cost of being such a self-insurer, as provided elsewhere by law, may be paid from funds available to the Mississippi Transportation Commission, the Department of Public Safety or the Mississippi Industries for the Blind.

The Mississippi State Senate and the Mississippi House of Representatives may elect to become self-insurers under provisions elsewhere set out by law by notifying the commission of their intention of becoming such self-insurers. The cost of being such self-insurers, as provided elsewhere by law, may be paid from funds available to the Mississippi State Senate and the Mississippi House of Representatives. The Mississippi State Senate and the Mississippi House of Representatives are authorized and empowered to provide workers' compensation benefits for employees after January 1, 1970.

Any municipality of the State of Mississippi having forty thousand (40,000) population or more desiring to do so may elect to become a self-insurer under provisions elsewhere set out by law by notifying the commission of its intention of becoming such an insurer. The cost of being such a self-insurer, as provided elsewhere by law, may be provided from any funds available to such municipality.

The commission may, under such rules and regulations as it prescribes, permit two (2) or more "political subdivisions," as such term is defined in Section 11-46-1, Mississippi Code of 1972, to pool their liabilities to participate in a group workers' compensation self-insurance program. The governing authorities of any political subdivision may authorize the organization and operation of, or the participation in such a group self-insurance program with other political subdivisions, provided such program is approved by the commission. The cost of participating in a group self-insurance program may be provided from any funds available to a political subdivision.

Domestic servants, farmers and farm labor are not included under the provisions of this chapter, but this exemption does not apply to the processing of agricultural products when carried on commercially. Any purchaser of timber products shall not be liable for workers' compensation for any person who harvests and delivers timber to such purchaser if such purchaser is not liable for unemployment tax on the person harvesting and delivering the timber as provided by United States Code Annotated, Title 26, Section 3306, as amended. Provided, however, nothing in this section shall be construed to exempt an employer who would otherwise be covered under this section from providing workers' compensation coverage on those employees for whom he is liable for unemployment tax.

Employers exempted by this section may assume, with respect to any employee or classification of employees, the liability for compensation imposed upon employers by this chapter with respect to employees within the coverage of this chapter. The purchase and acceptance by such employer of valid workers' compensation insurance applicable to such employee or classification of employees shall constitute, as to such employer, an assumption by him of such liability under this chapter without any further act on his part notwithstanding any other provisions of this chapter, but only with respect to such employee or such classification of employees as are within the coverage of the state fund. Such assumption of liability shall take effect and continue from the effective date of such workers' compensation insurance and as long only as such coverage shall remain in force, in which case the employer shall be subject with respect to such employee or classification of employees to no other liability than the compensation as provided for in this chapter.

An owner/operator, and his drivers, must provide a certificate of insurance of workers' compensation coverage to the motor carrier or proof of coverage under a self-insured plan or an occupational accident policy. Any such occupational accident policy shall provide a minimum of One Million Dollars ($1,000,000.00) of coverage. Should the owner/operator fail to provide written proof of coverage to the motor carrier, then the owner/operator, and his drivers, shall be covered under the motor carrier's workers' compensation insurance program and the motor carrier is authorized to collect payment of the premium from the owner/operator. In the event that coverage is obtained by the owner/operator under a workers' compensation policy or through a self-insured or occupational accident policy, then the owner/operator, and his drivers, shall not be entitled to benefits under the motor carrier's workers' compensation insurance program unless the owner/operator has elected in writing to be covered under the carrier's workers' compensation program or policy or if the owner/operator is covered by the carrier's plan because he failed to obtain coverage. Coverage under the motor carrier's workers' compensation insurance program does not terminate the independent contractor status of the owner/operator under the written contract or lease agreement. Nothing shall prohibit or prevent an owner/operator from having or securing an occupational accident policy in addition to any workers' compensation coverage authorized by this section. Other than the amendments to this section by Chapter 523, Laws of 2006, the provisions of this section shall not be construed to have any effect on any other provision of law, judicial decision or any applicable common law.

This chapter shall not apply to transportation and maritime employments for which a rule of liability is provided by the laws of the United States.

This chapter shall not be applicable to a mere direct buyer-seller or vendor-vendee relationship where there is no employer-employee relationship as defined by Section 71-3-3, and any insurance carrier is hereby prohibited from charging a premium for any person who is a seller or vendor rather than an employee.

Any employer may elect, by proper and written action of its own governing authority, to be exempt from the provisions of the Workers' Compensation Law as to its sole proprietor, its partner in a partnership or to its employee who is the owner of fifteen percent (15%) or more of its stock in a corporation, if such sole proprietor, partner or employee also voluntarily agrees thereto in writing. Any sole proprietor, partner or employee owning fifteen percent (15%) or more of the stock of his/her corporate employer who becomes exempt from coverage under the Workers' Compensation Law shall be excluded from the total number of workers or operatives toward reaching the mandatory coverage threshold level of five (5).

HISTORY: Codes, 1942, § 6998-03; Laws, 1948, ch. 354, § 3; Laws, 1950, ch. 412,

§ 2; Laws, 1960, ch. 438; Laws, 1963, 1st Ex. Sess. ch. 36; Laws, 1964, ch. 443; Laws, 1968, ch. 478, § 1; Laws, 1970, ch. 454, § 1; ch. 455, § 1; Laws, 1972, ch. 522, § 1; Laws, 1981, ch. 416, § 1; reenacted, Laws, 1982, ch. 473, § 3; Laws, 1983, ch. 422, § 7; Laws, 1987, ch. 483, § 13; Laws, 1988, ch. 442, § 10; Laws, 1988, ch. 479, § 6; Laws, 1989, ch. 537, § 9; reenacted without change, Laws, 1990, ch. 405, § 3; reenacted and amended, Laws, 1990, ch. 518, § 10; Laws, 1991, ch. 618, § 45; Laws, 1992, ch. 491 § 47; Laws, 1992, ch. 577 § 1; Laws, 1992 Special Session, ch. 3, § 4; Laws, 2006, ch. 523, § 1, eff from and after passage (approved Apr. 3, 2006).

Cross References — Offset of workers' compensation against disability retirement benefits of public employees, see § 25-11-113.

Election of National Guard to come within provisions of Workers' Compensation Law, see § 33-1-29.

Workers' compensation coverage for civilian defense personnel, see §§ 33-15-15, 33-15-21.

Mississippi Industries for the Blind, see §§ 43-3-101 et seq.

Department of Public Safety generally, see § 45-1-1 et seq.

Workers' compensation coverage for patrolmen and other public safety department personnel, see § 45-1-15.

Workers' compensation coverage for guards and other state penitentiary personnel, see § 47-5-43.

Workers' compensation coverage for port commission employees, see § 59-7-205.

Exclusion of workers' compensation coverage from motor vehicle liability policy, see § 63-15-43.

Mississippi Transportation Commission, see § 65-1-3.

Establishment of special workers' compensation account for payment of compensation, see § 71-3-38.

Exception of workers' compensation coverage from health and accident insurance laws, see § 83-9-17.

Workers' compensation coverage for condominium owners, see § 89-9-17.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
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10. Review.

1. In general.

Workers' Compensation Act applied to an employer because it had at least five employees at the time of a workers' injury; there was no evidence that any of the employer's officers had elected to opt out of coverage in writing, and thus, they acted as employees and counted as employees for coverage purposes. Southeastern Auto Brokers v. Graves, 210 So. 3d 1012, 2015 Miss. App. LEXIS 205 (Miss. Ct. App. 2015).

Self-insured employer was bound by statement in employee handbook provided to every employee that employees would be covered for what would in effect be compensable injury under Workers' Compensation Act. Southwest Miss. Regional Medical Ctr. v. Lawrence, 684 So. 2d 1257, 1996 Miss. LEXIS 642 (Miss. 1996).

Employee proved by preponderance of evidence that his employer did not carry workers' compensation, as required for every employer with five or more employees. James M. Burns Lumber Co. v. Dilworth, 676 So. 2d 892, 1996 Miss. LEXIS 297 (Miss. 1996).

Where an employee was in the course and scope of his employment with both

Mississippi and Louisiana employers at the time of his death, a settlement from the Louisiana employers in Louisiana workmen's compensation proceedings did not bar a claim for death benefits against the Mississippi employer-carrier in Mississippi, but the Mississippi employer-carrier was entitled to credit for the amount paid by the Louisiana employers. Dependents of Roberts v. Holiday Parks, Inc., 260 So. 2d 476, 1972 Miss. LEXIS 1571 (Miss. 1972).

The Mississippi Workmen's Compensation Law was adopted in the exercise of the state's police power to provide for the welfare of its citizens and others performing labor within its borders, and the state has a legitimate interest in imposing a rule of compensation liability where the injury occurs in that state. Nowlin v. Lee, 203 So. 2d 493, 1967 Miss. LEXIS 1379 (Miss. 1967).

The relation of employer and employee is not invalidated because the contract under which the employer is proceeding may be an improvident one. Virden Lumber Co. v. Price, 223 Miss. 336, 78 So. 2d 157, 1955 Miss. LEXIS 385 (Miss. 1955).

The requirement that the employer must secure payment of compensation means that he must have in effect an insurance policy complying with the Workmen's Compensation Law, or must qualify as self-insurer. McCoy v. Cornish, 220 Miss. 577, 71 So. 2d 304, 1954 Miss. LEXIS 474 (Miss. 1954).

2. Standard of proof.

In a case where it was decided that two owners should have procured workers' compensation insurance for a logging business, the preponderance of the evidence standard was properly used in making this determination under Miss. Code Ann. § 71-3-5, rather than the clear and convincing proof standard in Miss. Code Ann. § 71-3-83. White v. Jordan, 11 So. 3d 755, 2008 Miss. App. LEXIS 679 (Miss. Ct. App. 2008), cert. denied, 2009 Miss. LEXIS 297 (Miss. June 25, 2009), cert. denied, 12 So. 3d 531, 2009 Miss. LEXIS 289 (Miss. 2009).

3. Number of employees.

Where decedent was killed while hauling logs for a subcontractor, the subcontractor, a trucking company, was qualified as an employer because it had five or more workmen or operatives under any contract of hire; therefore, the subcontractor had an obligation to secure compensation for its employees, which it did by having the contracting deduct premiums from the contractor's payments to the subcontractor. Lamar v. Thomas Fowler Trucking, Inc., 956 So. 2d 878, 2007 Miss. LEXIS 279 (Miss. 2007).

In the absence of any statutory provision for omission of out-of-state employees of the same employer in the count for the purpose of determining the minimum number of employees, out-of-state employees should be counted for the purpose of making such a determination. Nowlin v. Lee, 203 So. 2d 493, 1967 Miss. LEXIS 1379 (Miss. 1967).

Where the employer was engaged in the business of developing real estate in both Tennessee and Mississippi and his employees in Tennessee and Mississippi were all employees of the same establishment and were paid out of the same bank account, it was proper to add the number of his Tennessee employees to those working for him in Mississippi to determine whether he had the statutory minimum of eight employees. Nowlin v. Lee, 203 So. 2d 493, 1967 Miss. LEXIS 1379 (Miss. 1967).

Under evidence showing that, among other things, the work performed by three commissioned salesmen, who drove their own automobiles, constituted an integral part of the business of a partnership selling sewing machines, the partnership controlled the maximum price of the machines, could accept or reject any deferred payment contracts, required the salesmen to service the machines sold, could fire any of the salesmen at will, and the salesmen turned over to the partnership all funds collected, the attorney-referee and the commission did not err in finding that the commission salesmen were employees and not independent contractors, so that the partnership, which employed five additional persons, was an employer subject to the provisions of the Workmen's Compensation Law. Kahne v. Robinson, 232 Miss. 670, 100 So. 2d 132, 100 So. 2d 585, 1958 Miss. LEXIS 315, 1958 Miss. LEXIS 316 (Miss. 1958).

If by the character of the work the employer has once regularly employed eight or more persons, he remains under the Workmen's Compensation Law even when the number employed temporarily falls below the minimum, and it is not necessary that the minimum number of workers shall be employed on the same job or at the same place. Mosley v. Jones, 224 Miss. 725, 80 So. 2d 819, 1955 Miss. LEXIS 535 (Miss. 1955).

The Workmen's Compensation Law does not deny equal protection of the laws because it excludes employees of persons, firms, and corporations having in service less than eight workmen. Walters v. Blackledge, 220 Miss. 485, 71 So. 2d 433, 1954 Miss. LEXIS 464 (Miss. 1954).

The question whether the number of men employed is such as to bring the employer within the Workmen's Compensation Law is to be determined by the character of the work in which the men are employed, however brief or long, and not by the character of the employment whether regular, casual, occasional, periodical, or otherwise, so long as they were hired to do the work in common or unusual business of the employer. Jackson v. Fly, 215 Miss. 303, 60 So. 2d 782, 63 So. 2d 536, 1953 Miss. LEXIS 363 (Miss. 1953).

4. Exemptions.

If exemptions are to be surrendered, the intention of the exemptionist to do so must be reasonably clear and certain. Eaton v. Joe N. Miles & Sons, 238 Miss. 605, 119 So. 2d 359, 1960 Miss. LEXIS 444 (Miss. 1960).

5. —Farmers and farm labor.

Employer was in the business of processing oyster meat, rather than farming, and, therefore, an employee was not exempted from the act where the employer removed oysters from their shells, washed them, and packed them. Bradford Seafood Co. v. Alexander, 785 So. 2d 321, 2001 Miss. App. LEXIS 209 (Miss. Ct. App. 2001).

A claimant who did not engage in agricultural pursuits of any nature whatsoever and whose sole activity was that of clearing land, using a bulldozer for this purpose and performing mechanical work on the machine, was not a "farm laborer" within the exemption provided by this section [Code 1942, § 6998-03]. Nowlin v. Lee, 203 So. 2d 493, 1967 Miss. LEXIS 1379 (Miss. 1967).

A partnership did not lose its right to exemption by merely taking out workmen's compensation insurance to cover their farm laborers at time of purchase of the farm, where there was no compliance with the statutory requirement as to the posting of notices on the premises, and notification was not given to the workmen's compensation commission of their election to come under the Workmen's Compensation Law, and the claimant was not led to believe that he would receive workmen's compensation benefit if injured in the course of his employment. Eaton v. Joe N. Miles & Sons, 238 Miss. 605, 119 So. 2d 359, 1960 Miss. LEXIS 444 (Miss. 1960).

A claimant who was injured while combining seed on employer's farm was doing farm labor at the time of his injury and was not engaged in commercial processing of agricultural products. Eaton v. Joe N. Miles & Sons, 238 Miss. 605, 119 So. 2d 359, 1960 Miss. LEXIS 444 (Miss. 1960).

Death of a sharecropper and farm laborer resulting from his being thrown from and run over by the landowner's tractor and trailer while hauling his own cotton from the field to the landowner's gin arose out of and in the course of his farming activities, so that his widow and dependent could not recover death benefits under the Workmen's Compensation Law. Wilkins v. Wood, 229 Miss. 553, 91 So. 2d 560, 1956 Miss. LEXIS 639 (Miss. 1956).

6. — Maritime employment.

Workers' Compensation Commission properly dismissed an employee's claim for benefits because the Workers' Compensation Act excluded transportation and maritime employments for which a rule of liability was provided by the law of the United States, the employee was engaged in maritime employment at that time of his injury, and he had accepted benefits under the Longshore and Harbor Workers' Compensation Act. Kimbrough v. Fowler's Pressure Washing, LLC, 170 So. 3d 609, 2015 Miss. App. LEXIS 116 (Miss. Ct. App.), cert. denied, 168 So. 3d 962, 2015 Miss. LEXIS 401 (Miss. 2015).

In an action against a general contractor and a subcontractor arising from the death of an iron worker while constructing a casino on a barge on a navigable waterway, the general contractor was not entitled to immunity as the decedent's statutory employer because the decedent was covered by the federal Longshore and Harbor Workers' Compensation Act at the time of his death. Accu-Fab & Constr., Inc. v. Ladner by & Through Ladner, 970 So. 2d 1276, 2000 Miss. App. LEXIS 111 (Miss. Ct. App. 2000), aff'd, 778 So. 2d 766, 2001 Miss. LEXIS 38 (Miss. 2001).

The general contractor and a subcontractor involved in the construction of a barge casino located on a navigable waterway were not entitled to statutory immunity under Workers' Compensation Act with regard to injuries sustained by an employee of another subcontractor; that employee was covered under the Longshore and Harbor Workers' Compensation Act at the time of his injury. Accu-Fab & Constr., Inc. v. Ladner by & Through Ladner, 1999 Miss. App. LEXIS 452 (Miss. Ct. App. June 29, 1999).

The state compensation law does not apply to a pilot on board a tug-boat operating in interstate commerce upon navigable waters of the United States while tied up to await the unloading of its barges. Valley Towing Co. v. Allen, 236 Miss. 51, 109 So. 2d 538, 1959 Miss. LEXIS 293 (Miss. 1959).

The state compensation law is not applicable to injuries sustained by persons employed under maritime contracts, where the particular employment is of a maritime nature and where the injury occurs on waters within admiralty jurisdiction, except in case of matters of local concern the regulation of which by the state will work no material prejudice to the characteristic features of maritime law or interfere with its proper harmony or uniformity in its international or interstate relations. Valley Towing Co. v. Allen, 236 Miss. 51, 109 So. 2d 538, 1959 Miss. LEXIS 293 (Miss. 1959).

7. —Governmental entities and agencies.

Statute exempting state employees from mandatory workmen's compensation coverage, Miss Code § 71-3-5, did not violate equal protection rights of school employee who was injured in truck accident because statute had rational basis; schools and school systems had limited financial resources whereas private industries could incorporate cost factor of insurance into product. Adams v. Petal Municipal Separate School Systems, 487 So. 2d 1329, 1986 Miss. LEXIS 2451 (Miss. 1986).

The exemption of school districts from mandatory worker's compensation coverage has rational basis, and does not impinge upon the equal protection rights of injured school district employees. Adams v. Petal Municipal Separate School Systems, 487 So. 2d 1329, 1986 Miss. LEXIS 2451 (Miss. 1986).

Community hospital and nursing home is agency of state excluded from statutory requirement that workmen's compensation coverage be obtained for employees, without regard to whether it is performing proprietary, as opposed to governmental, function. Parrott v. Winston County Community Hospital & Nursing Home, 464 So. 2d 1159, 1985 Miss. LEXIS 1945 (Miss. 1985).

8. —Other exclusions.

Lumber company was properly dismissed as a party in a workers' compensation case because there was no evidence offered of the existence of an employer-employee relationship between the lumber company or any of the employees of a logging business; moreover, there was no evidence that the lumber company paid the employees of the logging business or that lumber company exercised any control over the employees of the logging business. As such, the lumber company was exempt from the requirements of the workers' compensation laws under Miss. Code Ann. § 71-3-5. White v. Jordan, 11 So. 3d 755, 2008 Miss. App. LEXIS 679 (Miss. Ct. App. 2008), cert. denied, 2009 Miss. LEXIS 297 (Miss. June 25, 2009), cert. denied, 12 So. 3d 531, 2009 Miss. LEXIS 289 (Miss. 2009).

A painters' and decorators' association was held excluded by this provision. Davis v. Painting & Decorating Contractors, 240

Miss. 394, 126 So. 2d 876, 1961 Miss. LEXIS 474 (Miss. 1961).

9. Liability for coverage.

Claimant's work-related injuries from a motor vehicle accident were not compensable because the owner of a farm for whom defendant worked and a trucking company and its owner were not alter egos or dual employers. Therefore, the trucking company's purchase of workers' compensation insurance did not waive the farm-labor exemption. Yates v. Triple D, Inc., 295 So. 3d 586, 2020 Miss. App. LEXIS 145 (Miss. Ct. App. 2020).

Workers' Compensation Commission properly found that a decedent's fatal stroke was a compensable injury and that the accounting firm was obligated to provide workers' compensation benefits to the decedent's beneficiaries because the firm was required to obtain workers' compensation insurance and provide workers' compensation benefits to its employees where it had more than five employees, nothing in the record indicated that the firm provided any written notice that it was electing to exempt the decedent from coverage, and there was no evidence in the record that the decedent's stress, stroke, and death were caused by anything other than his professional life. Harper v. Banks, Finley, White & Co. of Miss., P.C., 167 So. 3d 1155, 2015 Miss. LEXIS 350 (Miss. 2015).

In a case where two owners of a logging business should have procured workers' compensation insurance for a logging business, it was irrelevant to the responsibility of the owners and the business that two injured employees had received benefits from an insurance policy that did not cover workers' compensation claims. White v. Jordan, 11 So. 3d 755, 2008 Miss. App. LEXIS 679 (Miss. Ct. App. 2008), cert. denied, 2009 Miss. LEXIS 297 (Miss. June 25, 2009), cert. denied, 12 So. 3d 531, 2009 Miss. LEXIS 289 (Miss. 2009).

Miss. Code Ann. § 71-3-5 does not set any timetable for procuring workers' compensation insurance, it merely gives the coverage criteria; however, given the beneficent purpose of the Mississippi Workers' Compensation Act, it should be readily apparent to any business owner that workers' compensation insurance is necessary as soon as the business meets the statutory definition of a covered employer. Therefore, two business owners were not held to a higher standard than other businesses when it was determined that they should have procured workers' compensation insurance before an accident occurred. White v. Jordan, 11 So. 3d 755, 2008 Miss. App. LEXIS 679 (Miss. Ct. App. 2008), cert. denied, 2009 Miss. LEXIS 297 (Miss. June 25, 2009), cert. denied, 12 So. 3d 531, 2009 Miss. LEXIS 289 (Miss. 2009).

Where the evidence showed that two employees had worked for a spouse's logging business previously and they had worked with a second business for a few weeks before an accident, the employees were regularly employed by a second business and brought it within the definition of a covered employer under Miss. Code Ann. § 71-3-5. White v. Jordan, 11 So. 3d 755, 2008 Miss. App. LEXIS 679 (Miss. Ct. App. 2008), cert. denied, 2009 Miss. LEXIS 297 (Miss. June 25, 2009), cert. denied, 12 So. 3d 531, 2009 Miss. LEXIS 289 (Miss. 2009).

The owner of two pulpwood business corporations who contracted with a construction firm to build his residence, terminated that contract, and subsequently contracted for the services of more than five of the firm's workmen to finish the house, came within the purview of the Workmen's Compensation Law; a workman who was injured during construction was therefore entitled to recover from an insurance policy issued to the owner of the house personally to cover his pulpwood corporations under the Workmen's Compensation Law. Colonial Life & Acci. Ins. Co. v. Bookout, 346 So. 2d 898, 1976 Miss. LEXIS 1499 (Miss. 1976).

Injuries sustained by one serving city in various capacities, who also acted as city marshal, while returning from investigating a bomb scare, held to have been while performing duties of an undercovered elected office. Floyd v. Drew, 241 Miss. 217, 129 So. 2d 340, 1961 Miss. LEXIS 334 (Miss. 1961).

Employee of seller of logs to mill-owner is not entitled to compensation from mill-owner for broken leg sustained while delivering them at the mill. Taylor v. Beasley, 237 Miss. 291, 114 So. 2d 775, 1959 Miss. LEXIS 467 (Miss. 1959).

Where a newspaper employer, furnishing newspapers to newsboy, had the power to fire the newsboy at will and to fix the price of the newspaper to the carrier and to the customer, and had control of the entire route over which the carrier was permitted to work, their relationship was one of employer and employee making the carrier boy eligible for workmen's compensation. Laurel Daily Leader, Inc. v. James, 224 Miss. 654, 80 So. 2d 770, 1955 Miss. LEXIS 530 (Miss. 1955), but see Webster v. Mississippi Publishers Corp., 1989 Miss. LEXIS 519 (Miss. Dec. 20, 1989).

Prior to the 1956 amendment, where the claimant was a working partner of a firm and had not obtained compensation coverage by compliance with the provisions of the Workmen's Compensation Law, his injury was not compensable. American Surety Co. v. Cooper, 222 Miss. 429, 76 So. 2d 254, 1954 Miss. LEXIS 662 (Miss. 1954).

Where an employee was carrying workmen's compensation for his employees and reported accident to his insurance carrier, the injured employee was precluded from an action based upon alleged common-law negligence, even though the injured employee was not named in the workmen's compensation policy. Nowell v. Harris, 219 Miss. 363, 68 So. 2d 464, 1953 Miss. LEXIS 397 (Miss. 1953).

Where a subcontractor had in service eight or more workmen regularly in his business and has failed to secure the payment of compensation for his employees, the primary contractor is not liable for the benefits for injuries sustained by employee on a job other than that of the primary contractor. Jackson v. Fly, 215 Miss. 303, 60 So. 2d 782, 63 So. 2d 536, 1953 Miss. LEXIS 363 (Miss. 1953).

10. Review.

Standard of review in workers' compensation cases is limited and substantial evidence test is used. Inman v. Coca-Cola/Dr. Pepper Bottling Co., 678 So. 2d 992, 1996 Miss. LEXIS 420 (Miss. 1996).

Workers' Compensation Commission is trier and finder of facts in compensation claim; Supreme Court will reverse Commission's order only if it finds that order clearly erroneous and contrary to overwhelming weight of evidence. Inman v. Coca-Cola/Dr. Pepper Bottling Co., 678 So. 2d 992, 1996 Miss. LEXIS 420 (Miss. 1996).

In reversing the Commission's fact-finding, reviewing courts are advised to provided detailed, written support for their conclusions. R.C. Petroleum, Inc. v. Hernandez, 555 So. 2d 1017, 1990 Miss. LEXIS 10 (Miss. 1990).

An error in fixing the amount allowed for disability cannot be asserted for the first time on suggestion of error. Rigdon v. General Box Co., 249 Miss. 239, 162 So. 2d 863, 1964 Miss. LEXIS 390 (Miss. 1964).

OPINIONS OF THE ATTORNEY GENERAL

There is no authority for a school district to apply for self-insured status on its own, but a school district may organize and participate in a self-insurance program approved by the commission in cooperation with another political subdivision. Arledge, Oct. 6, 2000, A.G. Op. #2000-0558.

A school district has the authority to participate in the Mississippi Municipal Workers' Compensation Group, a liability pool created for participation by various political subdivisions, as long as it was created pursuant to this section. Seal, Aug. 29, 2003, A.G. Op. 03-0415.

RESEARCH REFERENCES

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Workers' compensation: attorney's fee or other expenses of litigation incurred by employee in action against third party tortfeasor as charge against employer's distributive share. 74 A.L.R.3d 854.

Workers' compensation: effect of allegation that injury was caused by, or occurred during course of, worker's illegal conduct. 73 A.L.R.4th 270.

Applicability under 29 CFR 1918.2 of Safety and Health Regulations for Longshoring to actions against ship owners pursuant to 33 USCS § 905(b) of the Longshoremen's and Harbor Workers' Compensation Act amendment of 1972. 56 A.L.R. Fed. 812.

Construction and Application of Longshore and Harbor Workers' Compensation Act (LHWCA) – Supreme Court Cases. 72 A.L.R. Fed. 2d 1.

Am. Jur.

82 Am. Jur. 2d, Workers' Compensation §§ 83 et seq.

17 Am. Jur. Pl & Pr Forms (Rev), Master and Servant, Forms 211 et seq. (liability of employer for injuries to employee).

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99 C.J.S., Workers' Compensation §§ 114 et seq.

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§ 71-3-7. Liability for payment of compensation.

(1) Compensation shall be payable for disability or death of an employee from injury or occupational disease arising out of and in the course of employment, without regard to fault as to the cause of the injury or occupational disease. An occupational disease shall be deemed to arise out of and in the course of employment when there is evidence that there is a direct causal connection between the work performed and the occupational disease. In all claims in which no benefits, including disability, death and medical benefits, have been paid, the claimant shall file medical records in support of his claim for benefits when filing a petition to controvert. If the claimant is unable to file the medical records in support of his claim for benefits at the time of filing the petition to controvert because of a limitation of time established by Section 71-3-35 or Section 71-3-53, the claimant shall file medical records in support of his claim within sixty (60) days after filing the petition to controvert.

(2) Where a preexisting physical handicap, disease, or lesion is shown by medical findings to be a material contributing factor in the results following injury, the compensation which, but for this subsection, would be payable shall be reduced by that proportion which such preexisting physical handicap, disease, or lesion contributed to the production of the results following the injury. The preexisting condition does not have to be occupationally disabling for this apportionment to apply.

(3) The following provisions shall apply to subsections (1) and (2) of this section:

(a) Apportionment shall not be applied until the claimant has reached maximum medical recovery.

(b) The employer or carrier does not have the power to determine the date of maximum medical recovery or percentage of apportionment. This must be done by the attorney-referee, subject to review by the commission as the ultimate finder of fact.

(c) After the date the claimant reaches maximum medical recovery, weekly compensation benefits and maximum recovery shall be reduced by that proportion which the preexisting physical handicap, disease, or lesion contributes to the results following injury.

(d) If maximum medical recovery has occurred before the hearing and order of the attorney-referee, credit for excess payments shall be allowed in future payments. Such allowances and method of accomplishment of the same shall be determined by the attorney-referee, subject to review by the commission. However, no actual repayment of such excess shall be made to the employer or carrier.

(4) No compensation shall be payable if the use of drugs illegally, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or intoxication due to the use of alcohol of the employee was the proximate cause of the injury, or if it was the willful intention of the employee to injure or kill himself or another.

(5) Every employer to whom this chapter applies shall be liable for and shall secure the payment to his employees of the compensation payable under its provisions.

(6) In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to employees of the subcontractor, unless the subcontractor has secured such payment.

HISTORY: Codes, 1942, § 6998-04; Laws, 1948, ch. 354, § 4; Laws, 1950, ch. 412, § 3; Laws, 1958, ch. 454, § 1; Laws, 1960, ch. 277; Laws, 1968, ch. 559, § 3; reenacted without change, Laws, 1982, ch. 473, § 4; reenacted without change, Laws, 1990, ch. 405, § 4; Laws, 2012, ch. 522, § 2, eff from and after July 1, 2012.

Editor's Notes — Laws of 2012, ch. 522, §§ 10 and 11, provide:

"SECTION 10. The Workers' Compensation Commission shall promulgate a written statement specifying the changes made to the Workers' Compensation Law by this act to every employer in this state subject to the Workers' Compensation Law. Within ten (10) days of receipt of this written statement from the Commission, every employer shall post the Commission's statement in a conspicuous place or places in and about his place or places of business and adjacent to the Notice of Coverage as required by Section 71-3-81.

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, and shall apply to injuries occurring on or after July 1, 2012."

Cross References — Admissibility of employer-administered drug or alcohol test results to determine intoxication of employee at time of allegedly compensable injury, see § 71-3-121.

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1. In general.

A post-injury termination for misconduct, even if the misconduct contributed to the injury, does not end the right to benefits. Tyson Foods v. Hilliard, 772 So. 2d 1103, 2000 Miss. App. LEXIS 582 (Miss. Ct. App. 2000).

The Workers' Compensation Commission, within legal limits, is the sole judge of the weight and sufficiency of the evidence. Evidence which is not contradicted by positive testimony or circumstances, and which is not inherently improbable, incredible, or unreasonable, cannot, as a matter of law, be arbitrarily or capriciously discredited, disregarded or rejected, even though the witness is a party or is interested; unless uncontradicted evidence is shown to be untrustworthy, it is to be taken as conclusive and binding on the triers of fact. Morris v. Lansdell's Frame Co., 547 So. 2d 782, 1989 Miss. LEXIS 336 (Miss. 1989).

If maximum medical recovery has occurred before the attorney-referee's hearing and order, credit for any excess payments by the employer and carrier shall be allowed in future payments; and such allowances and the method for crediting excess payments against future payments shall be determined by the attorney-referee, subject to review. Cockrell Banana Co. v. Harris, 212 So. 2d 581, 1968 Miss. LEXIS 1290 (Miss. 1968).

Until maximum medical recovery has been reached the claimant is entitled to full temporary total disability payments unless such disability was total and permanent on the date of injury. Cockrell Banana Co. v. Harris, 212 So. 2d 581, 1968 Miss. LEXIS 1290 (Miss. 1968).

A claim for disability under the compensation law is not a suit to recover damages growing out of an industrial injury, but is compensation for loss of earnings as a result of an industrial injury, or the loss to the dependents of a worker because of his death. Thyer Mfg. Co. v. Mooney, 252 Miss. 629, 173 So. 2d 652, 1965 Miss. LEXIS 1134 (Miss. 1965).

This section [Code 1942, § 6998-04] is constitutional. Southeastern Constr. Co. v. Dependent of Dodson, 247 Miss. 1, 153 So. 2d 276, 1963 Miss. LEXIS 277 (Miss. 1963).

The propriety and fairness of this section [Code 1942, § 6998-04] is not a judicial question. Southeastern Constr. Co. v. Dependent of Dodson, 247 Miss. 1, 153 So. 2d 276, 1963 Miss. LEXIS 277 (Miss. 1963).

A workmen's compensation policy covered the employees of insured and the fact that a worker was not named in the policy is immaterial. Nowell v. Harris, 219 Miss. 363, 68 So. 2d 464, 1953 Miss. LEXIS 397 (Miss. 1953).

In an action against shipper by rail for personal injuries sustained because of alleged improper manner in loading a flatcar, by an employee of consignee, neither the consignee nor its insurance carrier, who were alleged to be paying the employee workmen's compensation benefits and who received notice of the action, were necessary parties to the action. American Creosote Works v. Harp, 215 Miss. 5, 60 So. 2d 514, 1952 Miss. LEXIS 531 (Miss. 1952).

2. Liability for payment.

There is no support in the Mississippi Workers' Compensation Act, or in the case law, for the proposition that an employer which itself is free of any wrongdoing can be held liable on an alter-ego theory for its workers' compensation carrier's bad faith failure to pay benefits; the law, in fact, is to the contrary. Toney v. Lowery Woodyards, 278 F. Supp. 2d 786, 2003 U.S. Dist. LEXIS 14180 (S.D. Miss. 2003).

An employers' liability under the Workmen's Compensation Law is not affected by his failure to obtain insurance. Dependents of Dawson v. Delta Western Exploration Co., 245 Miss. 335, 147 So. 2d 485, 1962 Miss. LEXIS 556 (Miss. 1962).

Liability for compensation is on the insurer at the time of injury rather than the insurer at the time of resulting disability. Potts v. Lowery, 242 Miss. 300, 134 So. 2d 474, 1961 Miss. LEXIS 559 (Miss. 1961).

The act of the employer's manager in telling claimant that she was under the compensation law and furnishing her with blank forms of claim, does not obligate the employer to pay compensation to one whose claim is not compensable. Ray v. Wells-Lamont Glove Factory, 236 Miss. 154, 109 So. 2d 544, 1959 Miss. LEXIS 304 (Miss. 1959).

3. — Bad faith denial of benefits.

Employee's claim that her former employer acted in bad faith in denying workers' compensation benefits under Miss. Code Ann. § 71-3-7, which benefits the employee later received via a settlement, failed because the employer had arguable reasons for its decision where an investigation into whether the employee's alleged sexual relationship with her manager ever occurred or was the cause of the employee's mental health problems was inconclusive. Hood v. Sears Roebuck & Co., 532 F. Supp. 2d 795, 2005 U.S. Dist. LEXIS 46216 (S.D. Miss. 2005), aff'd, 247 Fed. Appx. 531, 2007 U.S. App. LEXIS 21978 (5th Cir. Miss. 2007).

4. Insurance carriers.

An employer and its carrier were not entitled to credit for excess payments with regard to payment, pursuant to company policy, of regular salary as sick pay for 90 working days. Pet, Inc., Dairy Div. v. Roberson, 329 So. 2d 516, 1976 Miss. LEXIS 1826 (Miss. 1976).

The Workmen's Compensation Law does not provide for contribution between insurance carriers, and the apportionment provisions of this section [Code 1942, § 6998-04] refer only to the amount of compensation to which the injured employee will be entitled, not to how the payments of the compensation will be apportioned among those liable. Thyer Mfg. Co. v. Mooney, 252 Miss. 629, 173 So. 2d 652, 1965 Miss. LEXIS 1134 (Miss. 1965).

5. Salary, sick pay or vacation pay as affecting payment.

Although a claimant is not entitled to compensation when he or she receives his or her regular salary in lieu of compensation, sick pay, vacation pay, donations or gratuities are not salary in lieu of compensation; thus, a claimant should have been awarded benefits during the time he was on vacation and receiving vacation pay where he was totally disabled at the time he took his vacation leave. Lanterman v. Roadway Express, Inc., 608 So. 2d 1340, 1992 Miss. LEXIS 564 (Miss. 1992).

6. Pain.

Compensation may be allowed for disabling pain in the absence of positive medical testimony as to any physical cause whatever. When the patient complains of pain, the doctor usually takes the fact of pain for granted and the absence of physical findings to account for the pain will not necessarily bar compensation. In such cases, evidence of an accident followed by disabling pain and the absence of evidence as to the cause of the pain from objective medical findings may be sufficient as a basis for compensation, in the absence of circumstances tending to show malingering or indicating that the claimant's testimony as to pain is inherently improbable, incredible, unreasonable or untrustworthy. However, there is a great potential for abuse in claims which are based predominantly upon pain reported by the patient, particularly in circumstances where the patient's testimony or statement to the physician is the sole evidence of its continued presence. In these cases, it would be prudent to obtain additional medical evidence to either support or dispute the claim. Morris v. Lansdell's Frame Co., 547 So. 2d 782, 1989 Miss. LEXIS 336 (Miss. 1989).

7. Injury arising out of and during course of employment, generally.

Where both of a workers' compensation claimant's doctors testified that the claimant's injuries were consistent with the injury that the claimant described wherein a patient fell onto the claimant's shoulder and the claimant's back popped, the claimant's resulting disability, defined under Miss. Code Ann. § 71-3-3(i), was compensable because it was work-related under Miss. Code Ann. § 71-3-7. Lang v. Miss. Baptist Med. Ctr., 53 So. 3d 814, 2010 Miss. App. LEXIS 588 (Miss. Ct. App. 2010).

Where the employees' injuries arose out of and in the course of employment, under Miss. Code Ann. § 71-3-3(b), their claims of battery and intentional infliction of emotional distress against the employer were not precluded by the Mississippi Workers' Compensation Act, Miss. Code Ann. § 71-3-9, as a matter of law. Franklin Corp. v. Tedford, 2009 Miss. LEXIS 169 (Miss. Apr. 16, 2009), sub. op., 18 So. 3d 215, 2009 Miss. LEXIS 426 (Miss. 2009).

Where the parties stipulated that a claimant's wrist injury was work-related, the Mississippi Workers' Compensation Commission erred in affirming an administrative law judge's (ALJ's) ruling that her injury at L-4 was not work-related, because that issue had not been before the ALJ and would ripen for adjudication only if and when she decided to undergo back surgery. Barber Seafood, Inc. v. Smith, 911 So. 2d 454, 2005 Miss. LEXIS 470 (Miss. 2005).

The injury arises out of and in the course the employment if the employment aggravates, accelerates, or contributes to the disability as opposed to being the sole or principal cause. Fought v. Stuart C. Irby Co., 523 So. 2d 314, 1988 Miss. LEXIS 86 (Miss. 1988).

Disability attendant on the general stress or normal human wear and tear of the workplace is not compensable under workers' compensation; however, benefits may be available where an employee experiences a series of identifiable and extraordinarily stressful work-connected incidents. Fought v. Stuart C. Irby Co., 523 So. 2d 314, 1988 Miss. LEXIS 86 (Miss. 1988).

The phrase "in the course of employment" as used in Code 1942 § 6998-04, does not mean that the worker must have died on the job or on the premises of the employer. Mississippi Research & Development Center v. Dependents of Shults, 287 So. 2d 273, 1973 Miss. LEXIS 1331 (Miss. 1973).

An injury occurs in the course of the employment when it takes place within the period of employment, at a place where the employee reasonably may be in the performance of his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto, or where he is engaged in the furtherance of the employer's business. Jefferson v. T. L. James & Co., 420 F.2d 322, 1969 U.S. App. LEXIS 9766 (5th Cir. Miss. 1969).

In an action on a claim for workmen's compensation benefits, it was for the commission, based on the medical and lay testimony, to determine not only whether the bulge or herniated disc and the resultant disability arose out of and in the course of the claimant's employment, but also to determine, if allowable, when compensability should begin. Central Electric & Machinery Co. v. Shelton, 220 So. 2d 320, 1969 Miss. LEXIS 1454 (Miss. 1969).

The signing of an application for group insurance benefits is a factor to be considered in determining whether an injury was work connected or arose out of a pre-existing condition, but it is not per se a bar to a claim under the Workmen's Compensation Law where the facts are in dispute. Central Electric & Machinery Co. v. Shelton, 220 So. 2d 320, 1969 Miss. LEXIS 1454 (Miss. 1969).

In a case in which it was contended that an employee who was injured as a consequence of a tornado was not entitled to compensation for the reason that his injuries resulted from an "act of God," the court announced as a general rule that it would recognize an employee's right to compensation for injury as "arising out of" his employment when the employee is injured at the place he is required to be engaged in the employer's business, and not that of his own, and where the employer's business required the employee to be at the place of the accident at the time it occurred. Wiggins v. Knox Glass, Inc., 219 So. 2d 154, 1969 Miss. LEXIS 1417 (Miss. 1969).

Disability resulting from an occupational disease is not compensable under the Workmen's Compensation Law. Heckford v. International Paper Co., 242 Miss. 337, 135 So. 2d 415, 1961 Miss. LEXIS 564 (Miss. 1961).

When an employee is on duty for 24 hours or is a resident employee, the entire period of his presence is within the course of his employment. M. & W. Constr. Co. v. Dependents of Bugg, 241 Miss. 133, 129 So. 2d 631, 1961 Miss. LEXIS 324 (Miss. 1961).

An activity is related to the employment if it carries out the employer's purposes or advances his interests, directly or indirectly. M. & W. Constr. Co. v. Dependents of Bugg, 241 Miss. 133, 129 So. 2d 631, 1961 Miss. LEXIS 324 (Miss. 1961).

An injury arises out of the employment where there is a causal connection between it and the job. Earnest v. Interstate Life & Acci. Ins. Co., 238 Miss. 648, 119 So. 2d 782, 1960 Miss. LEXIS 450 (Miss. 1960).

No unusual exertion on the part of an employee is necessary to make a claim compensable where it is clear that there is a causal connection between his work and injury or death. Russell v. Sohio Southern Pipe Lines, Inc., 236 Miss. 722, 112 So. 2d 357, 1959 Miss. LEXIS 369 (Miss. 1959).

Injury does not have to develop instantaneously, but may accrue gradually over a reasonably definite and not remote time. Insurance Dep't of Mississippi v. Dinsmore, 233 Miss. 569, 104 So. 2d 296, 1958 Miss. LEXIS 420 (Miss. 1958).

8. —Injury compensable, generally.

An employer's workers' compensation carrier would be liable for the injuries of an employee who was injured while changing a neighboring business' outdoor advertising sign where the employer had a policy of goodwill toward its business neighbors, which included changing the sign for the neighboring business, and the employees were expected to help foster the goodwill policy; since the employee acted in conformity with his employer's dictates, he acted in the course and scope of his employment, and was not a loaned servant to the neighboring business. Quick Change Oil & Lube v. Rogers, 663 So. 2d 585, 1995 Miss. LEXIS 582 (Miss. 1995).

The onset of an employee's essential tremors arose out of and in the course of employment where a cold tablet purchased from her employer exacerbated her pre-existing congenital condition and contributed to the onset of her essential tremor; the employer gained the benefits of lessening absenteeism due to illness by distributing the medication and, by memoranda, the employer suggested to its employees that they avail themselves of the medication provided at the employer's first-aid station. Quitman Knitting Mill v. Smith, 540 So. 2d 623, 1989 Miss. LEXIS 140 (Miss. 1989).

Exposure to falls upon a concrete floor is a sufficient risk attendant upon employment so that the death of a worker, caused by an idiopathic fall and striking of his head on the concrete floor of employer's premises, arose out of and within the course and scope of his employment, and the death was compensable. Chapman, Dependents of v. Hanson Scale Co., 495 So. 2d 1357, 1986 Miss. LEXIS 2710 (Miss. 1986).

Where an employee, who was the president and general manager of a subsidiary corporate employer, who performed work for several subsidiaries and the master corporation, and who had flown the president of the master corporation to Texas and then flown on to Louisiana on business for his employer and other subsidiary corporations, the evidence was sufficient, upon a claim for death benefits by the employee's dependents, that the employee was performing services within the course and scope of his employment with his subsidiary corporate employer at the time of his death in a plane crash while he was returning to Texas from Louisiana to pick up the president of the master corporation. Dependents of Roberts v. Holiday Parks, Inc., 260 So. 2d 476, 1972 Miss. LEXIS 1571 (Miss. 1972).

9. —Injury not compensable, generally.

A groundskeeper's aid was not acting within the scope of his employment when he drowned in a swimming pool, and therefore his parents were not barred by the exclusive remedy provisions of the Mississippi Workers' Compensation Act from bringing a wrongful death action on his behalf, where the employee was not required by his job duties to be in the vicinity of the swimming pool, he was supposed to be hoeing grass from a sidewalk outside the fence surrounding the pool at the time he entered the pool area, and the employer had specifically instructed the employee to stay away from the pool because he could not swim. Estate of Brown by Brown v. Pearl River Valley Opportunity, 627 So. 2d 308, 1993 Miss. LEXIS 421 (Miss. 1993).

An employee's injury did not arise out of and in the course of his employment as a sack boy at a grocery store where the injury occurred when a firecracker which the employee had been given by another worker exploded in his hand, and the store had a policy of no foul play, which included fireworks, so that the employee's conduct was against the rules of the business; the accident and injury were the result of the employee's own misuse of and involvement with an object which was prohibited and outside the scope of the employee's employment, and therefore the injury sustained was not compensable. Mathis v. Nelson's Foodland, Inc., 606 So. 2d 101, 1992 Miss. LEXIS 49 (Miss. 1992).

A back injury sustained by a secretary-receptionist when, against the express objections of her employer, she helped a fellow employee move a table through the employer's place of business and down some stairs, was not an injury or disease arising out of and in the course of employment within the meaning of Code 1942, § 6998-04. Odom's Dispensing Opticians v. Smith, 259 So. 2d 486, 1972 Miss. LEXIS 1532 (Miss. 1972).

A claimant who was injured in an automobile accident while going to clean a well for a church with a mud pump he had borrowed from his employer was, under the evidence, engaged in a personal mission and not acting for his employer. McLain & Barnes Hardware Co. v. Wilson, 245 So. 2d 578, 1971 Miss. LEXIS 1369 (Miss. 1971).

10. —Going to or returning from work.

Workers' Compensation Commission did not err in affirming the denial of an employee's workers' compensation benefits because he was not a "traveling employee" since he could not show that his facts fell in the exceptions to the "going and coming" rule where, inter alia, the employer did not pay for his traveling time, did not dictate the route he took, did not provide meals, the employee was driving his own vehicle, the employer did not reimburse him for mileage, he was not injured due to a hazard on his regular route that he, not the employer, chose, he was not paid for his commute, he had not been ordered by the employer to carry the tools to and from work, and the employer gained nothing from his commute. Lambert v. Energy Drilling Co., 313 So. 3d 518, 2021 Miss. App. LEXIS 114 (Miss. Ct. App. 2021).

The general rule is that the hazards encountered by employees while going to or returning from their regular place of work and off their employer's premises are not an incident to employment and accidents arising therefrom are not compensable, and an employee who claims an exception to this general rule has the burden of proving he comes within one of the exceptions. Aetna Finance Co. v. Bourgoin, 252 Miss. 852, 174 So. 2d 495, 1965 Miss. LEXIS 1154 (Miss. 1965).

Generally, injuries received in going to or returning from work are not "in the course of employment". Scott Builders, Inc. v. Dependent of Layton, 244 Miss. 641, 145 So. 2d 165, 1962 Miss. LEXIS 490 (Miss. 1962).

11. — —Injury compensable.

Worker's travel had a substantial work connection, as he was traveling to his regularly scheduled shift at a plant, and there was substantial evidence supporting the finding that the worker's employer-sponsored travel was an exception to the going and coming rule and was thereby compensable; the worker was driving a company vehicle provided by the company, he was authorized to drive the vehicle to and from his various work sites, and there was no contention that he abandoned his work duties or deviated from his work destination for an unauthorized personal mission. Linde Gas v. Edmonds, 167 So. 3d 1258, 2014 Miss. App. LEXIS 547 (Miss. Ct. App. 2014).

Injuries suffered while walking across a street to report for work were compensable under the special hazards exception to the "going and coming" rule since a benefits claimant was required to park in an employee lot and cross a street in the dark where there were no lights or traffic signals, and the fact that another lot existed did not bar recovery; moreover, the premises exception also applied, even though the employer did not own the parking lot, since the street was in such proximity to the premises to be, in effect, a part of such. Jesco, Inc. v. Cain, 954 So. 2d 537, 2007 Miss. App. LEXIS 257 (Miss. Ct. App. 2007).

An employee's injuries suffered in an automobile accident on her way home from work arose out of her employment, and were therefore compensable, where she was paid in part for her automobile and gasoline expenses to and from work by clocking in 45 minutes before she arrived at the office and clocking out 45 minutes after leaving the office. Matheson v. Favre, 586 So. 2d 833, 1991 Miss. LEXIS 676 (Miss. 1991).

Death of radio news reporter in automobile accident while reporter is going to station after having prepared news story at home arises out of and in scope of employment with station. Wilson v. Service Broadcasters, Inc. (WDAM), 483 So. 2d 1339, 1986 Miss. LEXIS 2387 (Miss. 1986).

Worker's death resulting from being struck, by car while attempting to walk across heavily trafficked road to meet employee with whom worker commutes arises out of and during course of employment where worker has no practical alternate route to leave place of employment. Ingalls Shipbuilding Div., Litton Systems, Inc. v. Dependents of Sloane, 480 So. 2d 1117, 1985 Miss. LEXIS 2377 (Miss. 1985).

Where claimant and his fellow employees on their way home from the site of their employment stopped and purchased a fifth of whisky which they began drinking, and later when they stopped by the roadside to relieve themselves the claimant stepped in a hole and broke his leg, the injury occurred within the scope and course of his employment, for the employer remunerated the employees for their transportation between the job site and their homes. Reading & Bates, Inc. v. Whittington, 208 So. 2d 437, 1968 Miss. LEXIS 1408 (Miss. 1968).

A claimant required to possess and use an automobile in the course of his employment who understood, as an order, the request of his employer's manager that he pick the manager up at his home and drive him to work, received a compensable injury as a consequence of an accident that occurred while he was so engaged. Aetna Finance Co. v. Bourgoin, 252 Miss. 852, 174 So. 2d 495, 1965 Miss. LEXIS 1154 (Miss. 1965).

Injury in automobile accident while being transported to place of work by employer's manager, held to arise out of and in course of employment. J. H. Tabb & Co. v. McAlister, 243 Miss. 271, 138 So. 2d 285, 1962 Miss. LEXIS 343 (Miss. 1962).

Where an employer paid to his night watchman, who lived six or seven miles from the place of employment, an additional $3 per week for payment of transportation, an injury, causing death, sustained by the employee in driving in his automobile from place of employment to his home was compensable. Pace v. Laurel Auto Parts, Inc., 238 Miss. 421, 118 So. 2d 871, 1960 Miss. LEXIS 422 (Miss. 1960).

Death of one, shot for some unknown reason by a fellow employee whom, in the discharge of his duty, he was transporting to place of work, held one arising out of and in the course of employment. Watson v. National Burial Asso., 234 Miss. 749, 107 So. 2d 739, 1958 Miss. LEXIS 547 (Miss. 1958).

Death of employee struck by lightning when waiting near a truck in which he was being taken to a place of work, while inquiries were being made as to the route, held to arise out of and in the course of employment. Jackson v. Bailey, 234 Miss. 697, 107 So. 2d 593, 1958 Miss. LEXIS 540 (Miss. 1958).

Where it appeared that a corporation's secretary-salesman was fatally injured in an automobile accident while on the way home after calling on a number of the corporation's customers, the death of the secretary-salesman arose out of and in the course of his employment. M. E. Badon Refrigeration Co. v. Badon, 231 Miss. 113, 95 So. 2d 114, 1957 Miss. LEXIS 495 (Miss. 1957).

12. — —Injury not compensable.

Workers' compensation benefits were not awarded to a benefits claimant because he did not fall into any exceptions to the going and coming rule; a car accident happened over a mile from an employer's gates, the land surrounding the road was owned by the federal government, there was no history of accidents necessitating a warning sign to those using the roadway, the road was not heavily traveled, and the claimant was not required to cross a dangerous intersection. Moreover, expert testimony presented by the claimant on the issue of whether the road was hazardous was not credible due to discrepancies. Ladner v. Grand Bear Golf Course/Grand Casino of Miss., 973 So. 2d 1008, 2008 Miss. App. LEXIS 29 (Miss. Ct. App. 2008).

The arrival of an employee at the place where he was to be picked up by his employer's truck and driven to a construction site thirty minutes before he was to begin work was unnecessary, and the injury he sustained immediately after his arrival did not arise in the course of employment, and the Mississippi Workmen's Compensation Law did not apply. Jefferson v. T. L. James & Co., 420 F.2d 322, 1969 U.S. App. LEXIS 9766 (5th Cir. Miss. 1969).

A claimant injured in an automobile accident while returning from work to his home as the guest passenger of a fellow employee was not entitled to compensation where the employer did not order the complainant to ride with his fellow-employee, nor was claimant paid any mileage to go to and from the job site. Perkinson v. Laurel Hot Mix, Inc., 252 Miss. 879, 174 So. 2d 391, 1965 Miss. LEXIS 1156 (Miss. 1965).

Fatal accident to an employee while driving employer's vehicle on returning from a midweek trip home held not to have arisen out of employment where the trip was for his personal pleasure and not under any agreement with the employer, whose policy was against such use of the employer's vehicles. Phillips Contracting Co. v. Dependents of Adair, 245 Miss. 365, 148 So. 2d 189, 1963 Miss. LEXIS 523 (Miss. 1963).

Injuries sustained by district manager for an insurance company did not rise out of or in the course of his employment where sustained while manager was on a trip to obtain his own car and to return it to the place where he was stationed, and the fact that the manager looked over some insurance policies, collected a premium, and discussed a permanent plan of insurance with a customer did not change the result. National Bankers Life Ins. Co. v. Jones, 244 Miss. 581, 145 So. 2d 173, 1962 Miss. LEXIS 480 (Miss. 1962).

Injuries sustained by a plant manager in an automobile accident while returning to his home in another city are not connected with his employment where he was expected to remain in town, and received an allowance toward his expenses in doing so. Edward Hyman Co. v. Rutter, 241 Miss. 301, 130 So. 2d 574, 1961 Miss. LEXIS 346 (Miss. 1961).

13. — —Presumptions in death cases.

The Workers' Compensation Commission's denial of benefits to an asthmatic employee would be reversed, even though a physician testified that there was not a "strong work-related causal connection between [the employee's] pneumonia and emphysema," where medical testimony established a causal connection between the exacerbation of her pre-existing respiratory problems and the inhalation of irritants in her work environment, and the employee's uncontroverted testimony of the onset pain in her side and back along with shortness of breath while she was performing her job duties established that her injury arose out of and in the course of her employment. Hedge v. Leggett & Platt, 641 So. 2d 9, 1994 Miss. LEXIS 362 (Miss. 1994).

When a worker is found dead at a place where the duties of employment require him to be, a rebuttable presumption arises that the worker's death was in whole or in part the result of an accident arising out of and in the course of his employment. Road Maintenance Supply, Inc. v. Dependents of Maxwell, 493 So. 2d 318, 1986 Miss. LEXIS 2537 (Miss. 1986).

When an employee has died while about his employment, a presumption rises that his death was causally related to his work activities, and before such presumption can be overcome, the employer must explain fully the cause of death and the work activities of the employee to show that there was no causal relation. McCarley v. Iuka Shirt Co., 258 So. 2d 421, 1972 Miss. LEXIS 1499 (Miss. 1972).

Where an employee is found dead at a place where his duties required him to be, there is a presumption that his death was a result of an accident arising out of and in the course of his employment, which presumption imposes on the employer not only the burden of overcoming it by evidence in explanation of the cause of death, but the further burden of developing the work activities of the employee to show that such activities did not contribute to the cause of death. City of Okolona v. Dependent of Harlow, 244 So. 2d 25, 1971 Miss. LEXIS 1322 (Miss. 1971).

In the absence of evidence to the contrary, an employee found dead of a heart attack at his employer's place of business is entitled to the presumption that the heart attack resulting in death was causally connected to his work activities, and the employer is under the burden of overcoming this presumption. Washington v. Greenville Mfg. & Machine Works, 223 So. 2d 642, 1969 Miss. LEXIS 1285 (Miss. 1969).

Where an employee is killed by a third party not connected with the employer or employee in any way, the burden of proof rests squarely upon the claimants to show that the death was causally connected with the employment, and the mere fact that the employee is at his place of employment when he meets his death is not sufficient. Dewberry v. Carter, 218 So. 2d 27, 1969 Miss. LEXIS 1591 (Miss. 1969).

The inference of causal connection between employment and death cannot only be indulged when the decedent is "found dead" at his place of employment but also when an employee "falls dead" in the presence of other employees. Mississippi State University v. Dependents of Hattaway, 191 So. 2d 418, 1966 Miss. LEXIS 1215 (Miss. 1966).

Death at place of employment during work hours gives rise to a rebuttable presumption that it resulted from injury arising out of and in the course of employment. L. B. Priester & Son, Inc. v. Dependents of Bynum, 247 Miss. 664, 157 So. 2d 399, 1963 Miss. LEXIS 340 (Miss. 1963).

When it is shown that an employee was found dead in a place where his duties required him to be, or where he might properly have been in performance of his duties during the hours of his work, in the absence of evidence that he was not engaged in his master's business, there is a presumption that the accident arose out of and in the course of employment within the meaning of the compensation law. Majure v. William H. Alsup & Associates, 216 Miss. 607, 63 So. 2d 113, 1953 Miss. LEXIS 676 (Miss. 1953); Winters Hardwood Dimension Co. v. Dependents of Harris, 236 Miss. 757, 112 So. 2d 227, 1959 Miss. LEXIS 373 (Miss. 1959); Dependents of Ingram v. Hyster Sales & Service, Inc., 231 So. 2d 500, 1970 Miss. LEXIS 1596 (Miss. 1970).

14. — —Particular death cases.

A circuit court judgment affirming the Workers' Compensation Commission's denial of benefits to a deceased employee's children was not supported by substantial evidence and would be reversed where the onset of the employee's death occurred at her place of employment and the employer failed to rebut the presumption that the employee's work activities did not cause or contribute to the condition from which she died; the unrebutted "found dead" legal presumption prevailed, satisfying the causal connection between the employee's work duties and the condition which resulted in her death. Nettles v. Gulf City Fisheries, 629 So. 2d 554, 1993 Miss. LEXIS 545 (Miss. 1993).

Presumption that accident arose out of and in course of employment arises when employee is found dead or falls dead at place where his duties require him to be or where he might properly be in performance of duties, and testimony by employee's physician regarding possibility that employee suffered attack of acute malignant arrhythmia was not sufficient to meet burden of proof required to rebut presumption. U.S. Rubber Reclaiming Co. v. Dependents of Stampley, 508 So. 2d 673, 1987 Miss. LEXIS 2599 (Miss. 1987).

Where decedent was found unconscious, slumped over his desk over a set of plans he had been working on, a presumption arose that the deceased died as a result of an accidental injury in the course of his employment, and further that there was a causal connection between such employment and the employee's death. Alexander v. Campbell Constr. Co., 288 So. 2d 4, 1974 Miss. LEXIS 1834 (Miss. 1974).

Where the testimony of the physician who had treated the decedent both during his final and fatal heart attack, suffered while working, and during an attack suffered at home some six months before the final attack, was, though somewhat ambiguous, definite enough to constitute an unrebutted medical opinion, it was sufficient to establish that the decedent's work activities contributed to the fatal illness. Futorian Mfg. Co. v. Dependents of Easley, 244 So. 2d 413, 1971 Miss. LEXIS 1335 (Miss. 1971).

Where an employee, who had no fixed hours of work, but was on 24-hour call for service on machines sold by his employer, was found lying dead on the ground in front of the truck furnished him by his employer, and the hood of the truck was raised and there was evidence that there had been a fire under the hood involving wiring, such evidence together with the presumption applicable in such cases, sufficiently established that the employee's fatal heart attack was an injury arising out of and in the course of his employment during an emergency when he was attempting to preserve his employer's property. Dependents of Ingram v. Hyster Sales & Service, Inc., 231 So. 2d 500, 1970 Miss. LEXIS 1596 (Miss. 1970).

The death of an employee who was shot and killed in a public road near the place of his employment for personal reasons in no wise connected with his job is not compensable. Dewberry v. Carter, 218 So. 2d 27, 1969 Miss. LEXIS 1591 (Miss. 1969).

The compensation commission is an administrative agency, not a court of law, and there is no method provided by law by which this agency may adjust equities between insurance carriers. Thyer Mfg. Co. v. Mooney, 252 Miss. 629, 173 So. 2d 652, 1965 Miss. LEXIS 1134 (Miss. 1965).

An award may properly be made for the death of a mechanic on 24-hour duty, found dead on his employer's premises, beneath a truck owned by him which he used in his employer's business, in the absence of any showing that he was at the time acting for himself. M. & W. Constr. Co. v. Dependents of Bugg, 241 Miss. 133, 129 So. 2d 631, 1961 Miss. LEXIS 324 (Miss. 1961).

Death, from heart attack, of a rubbish collector found lying unconscious in a bin the contents of which he had been shoveling into a truck, held to have arisen out of and in the course of his employment. Shannon v. Hazlehurst, 237 Miss. 828, 116 So. 2d 546, 1959 Miss. LEXIS 538 (Miss. 1959).

Compensation should have been awarded for the death of a member of an electric power company's maintenance crew, who had hypertensive cardiovascular disease and who, after a day's work of heavy physical labor during which he experienced pains in the cardiac region, went directly to his physician's office and within an hour dies of a heart attack.

Central Electric Power Asso. v. Hicks, 236 Miss. 378, 110 So. 2d 351, 112 So. 2d 230, 1959 Miss. LEXIS 330 (Miss. 1959).

A traveling salesman, killed when his car was wrecked on a highway which he would traverse while on his employer's business, is presumed to have been in the course of his employment, although his death was late at night, at a time beyond his regular working hours, and his equipment was in his room at a tourist court. Bryan Bros. Packing Co. v. Dependents of Murrah, 234 Miss. 494, 106 So. 2d 675, 1958 Miss. LEXIS 523 (Miss. 1958).

Evidence that an employee was murdered by a jilted suitor and that the only connection between her employment and the cause of her death was that she was on duty at the time she was shot and was merely informing the slayer of the rules of the telephone company, which prohibited visitors in the operating room of the telephone exchange, and that the slayer immediately after shooting the employee turned a pistol upon himself and committed suicide, failed to establish that the employee was killed because of her employment, and therefore she was not under the protection of the Estate of West v. Southern Bell Tel. & Tel. Co., 228 Miss. 890, 90 So. 2d 1, 1956 Miss. LEXIS 578 (Miss. 1956).

15. —Proof of claim.

Denial of workers' compensation benefits to an employee was inappropriate because the employee met his burden of proof showing that he had an injury, or an exacerbation of a preexisting injury, when he moved a desk at the behest of his supervisor. Any doubtful claims were to be resolved in favor of compensation. Short v. Wilson Meat House, LLC, 37 So. 3d 50, 2009 Miss. App. LEXIS 333 (Miss. Ct. App. 2009), rev'd, 36 So. 3d 1247, 2010 Miss. LEXIS 310 (Miss. 2010).

In order to establish industrial disability, the burden is upon the claimant to prove medical impairment and that the medical impairment resulted in a loss of wage-earning capacity. Robinson v. Packard Electric Div., General Motors Corp., 523 So. 2d 329, 1988 Miss. LEXIS 199 (Miss. 1988).

When a claimant seeks compensation benefits for disability resulting from a mental or psychological injury, the claimant has the burden of proving by clear and convincing evidence the connection between the employment and the injury. Fought v. Stuart C. Irby Co., 523 So. 2d 314, 1988 Miss. LEXIS 86 (Miss. 1988).

Fact that claimant for disability benefits does not report injury until 4 days after it occurs neither proves that disability must have been caused by something other than injury in course of employment nor bars claim as untimely, notwithstanding employer's policy requiring that workers report injuries immediately. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584, 1985 Miss. LEXIS 2197 (Miss. 1985).

The burden of proving his claim beyond speculation and conjecture is on the claimant, and he must prove that his injury is one which arises out of, and is sustained in, the course of employment. Flintkote Co. v. Jackson, 192 So. 2d 395, 1966 Miss. LEXIS 1251 (Miss. 1966); Johnson v. Gulfport Laundry & Cleaning Co., 249 Miss. 11, 162 So. 2d 859, 1964 Miss. LEXIS 370 (Miss. 1964).

Claimant has the burden of establishing every essential element of the claim, and it is not sufficient to leave anything to surmise or conjecture. Narkeeta, Inc. v. McCoy, 247 Miss. 65, 153 So. 2d 798, 1963 Miss. LEXIS 282 (Miss. 1963).

The burden is on claimant to show that disability resulted from, or was substantially caused by, an injury received while employed. Wells-Lamont Corp. v. Watkins, 247 Miss. 379, 151 So. 2d 600, 1963 Miss. LEXIS 311 (Miss. 1963).

The presumption that injury sustained by an employee arose out of his employment is rebuttable. Connell v. Armstrong Tire & Rubber Co., 242 Miss. 280, 134 So. 2d 435, 1961 Miss. LEXIS 556 (Miss. 1961).

Where accident arising out of and in the course of the employment is shown, the burden is on the employer to prove that disability is due to some cause for which he is not responsible. Hale v. General Box Mfg. Co., 235 Miss. 301, 108 So. 2d 844, 1959 Miss. LEXIS 430 (Miss. 1959).

Where an employee was found to have tuberculosis on a date some six weeks after he had left the employment of his former employer and started working for an independent contractor, medical evidence, including testimony as to the rapid progress of tuberculosis in members of the negro race, as well as the difficulty of determining when the employee first contracted the disease, presented a question of fact for the workmen's compensation board as to whether the employee had the disease at the time he left the former employer's service, and its determination that he did not, being supported by substantial evidence, would be affirmed. Lawson v. Traxler Gravel Co., 229 Miss. 159, 90 So. 2d 204, 1956 Miss. LEXIS 596 (Miss. 1956).

16. — —Benefits granted.

Testimony of claimant's physician giving opinion to reasonable medical certainty that claimant has experienced injury resulting in claimant being 100 percent disabled is sufficient to support finding of disability, notwithstanding contradictory testimony by employer's physician, where claimant's physician has examined and treated claimant on 9 or 10 occasions and employer's physician has examined claimant on only one occasion, some 10 months after most recent examination by claimant's physician. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584, 1985 Miss. LEXIS 2197 (Miss. 1985).

In an action on a claim for workmen's compensation benefits, evidence that the claimant, while at work, slipped and sustained pain to his back, which necessitated his taking some days from work, and that upon his return, he again hurt his back picking up a heavy object, sustained the commission's findings that a bulge or herniated disc and resultant disability arose out of and in the course of the claimant's employment, notwithstanding other evidence that the claimant prior to these injuries was found to have a degree of degenerative arthritis of some duration, and medical testimony suggesting that at least part of the disability was attributable to the pre-existing degenerative condition. Central Electric & Machinery Co. v. Shelton, 220 So. 2d 320, 1969 Miss. LEXIS 1454 (Miss. 1969).

A decedent who, immediately after his employment, was given a check by his employer as an advance against future wages and the permission to use employer's truck to go get it cashed and who died in a one car accident while on his way to get the money was not, at the time, within the scope and course of his employment. Sam Jones Casing Crews v. Dependents of Skipper, 199 So. 2d 436, 1967 Miss. LEXIS 1296 (Miss. 1967).

Sickness occasioned by finding part of a mouse in a bottle of soft drink purchased by an employee during a midmorning break from a vending machine on the employer's premises for the convenience of the personnel, is compensable as being in the course of the employment. Collums v. Caledonia Mfg. Co., 237 Miss. 607, 115 So. 2d 672, 1959 Miss. LEXIS 510 (Miss. 1959).

Evidence did not warrant commission's finding that loss of sight of one eye was unrelated to employment of one who, in handling chemical mixture, splashed some into eye. Mississippi Valley Aircraft Service v. Brown, 236 Miss. 511, 111 So. 2d 28, 1959 Miss. LEXIS 343 (Miss. 1959).

Uncontradicted testimony of an employee that he suffered a heart attack while at work involving physical exertion requires an award of compensation. Shivers v. Biloxi-Gulfport Daily Herald, 236 Miss. 303, 110 So. 2d 359, 1959 Miss. LEXIS 320 (Miss. 1959).

That one suffering a heart attack while at work remained at home for some time before going to a hospital does not negative injury on the job. Shivers v. Biloxi-Gulfport Daily Herald, 236 Miss. 303, 110 So. 2d 359, 1959 Miss. LEXIS 320 (Miss. 1959).

Commission's award of compensation benefits to an employee who sustained leg injuries while in the course of his employment was affirmed, notwithstanding conflicting evidence as to whether the injury aggravated the employee's varicose veins, or whether the pre-existing condition interfered with the healing of the injury. Jackson Ready-Mix Concrete v. Young, 230 Miss. 644, 93 So. 2d 645, 1957 Miss. LEXIS 405 (Miss. 1957).

Where a partnership which had a gin in use only six or seven months, in order to obtain a competent gin operator, hired a worker on a year-round basis and assigned other duties in addition to operating and repairing the gin, the injury suffered by the worker under the contract of employment and under direction of one of the partners arose out of and in the course of his employment. National Surety Corp. v. Kemp, 217 Miss. 537, 65 So. 2d 840, 1953 Miss. LEXIS 463 (Miss. 1953).

Where a housewife had for five years and with the knowledge of compensation carrier and her employer performed all her services as bookkeeper during evenings in her living room while seated at couch and working at a small table and where one night she put on her night clothes, for the purpose of being ready for bed after finishing bookkeeping work, the injury she received when her husband's shotgun discharged while she was removing it from the couch just before beginning her work, was one arising out of and in the course of employment. Joe Ready's Shell Station & Cafe v. Ready, 218 Miss. 80, 65 So. 2d 268, 1953 Miss. LEXIS 518, 1953 Miss. LEXIS 519 (Miss. 1953).

Where claimant was hired by partners on a yearly basis under a contract requiring him to take full charge of gin during ginning season and where he was customarily directed by partners during off season to do various jobs on farm buildings of the partners, the claimant was within the scope of his employment when erecting a political sign at direction of partner who was running for office of sheriff, and injuries sustained while erecting the sign arose out of and in course of the employment within meaning of the compensation law. National Surety Corp. v. Kemp, 217 Miss. 537, 65 So. 2d 840, 1953 Miss. LEXIS 463 (Miss. 1953).

Where a contractor hired a person to paint service stations and had the person transport doors, this created the relationship of employer and employee and when the painter was injured in an accident while transporting the doors the injury was compensable as arising out of and in the course of employment. Mills v. Jones' Estate, 213 Miss. 680, 56 So. 2d 488, 1952 Miss. LEXIS 410 (Miss. 1952), modified, 213 Miss. 680, 57 So. 2d 496, 1952 Miss. LEXIS 411 (Miss. 1952), overruled in part, Railway Express Agency, Inc. v. Hollingsworth, 221 Miss. 688, 75 So. 2d 639, 1954 Miss. LEXIS 580, 1954 Miss. LEXIS 581 (Miss. 1954), overruled, Railway Express Agency, Inc. v. Hollingsworth, 221 Miss. 688, 74 So. 2d 754, 1954 Miss. LEXIS 579 (Miss. 1954).

17. — — Benefits denied.

Worker's compensation claimant failed to prove that she had suffered a compensable injury because the claimant, although the claimant alleged that the claimant injured the claimant's back when a coworker kicked the claimant in the back at work, failed to prove by a preponderance of the evidence that the claimant suffered a compensable injury as the claimant's testimony was contradicted by the testimony of the person who allegedly kicked the claimant and the medical evidence did not corroborate the claimant's allegation of a traumatic low-back injury. Ross v. Jay's Truck Stop, 172 So. 3d 775, 2013 Miss. App. LEXIS 240 (Miss. Ct. App. 2013).

The evidence was insufficient to support a finding by the Workers' Compensation Commission that a claimant's back injury was work related where no doctor testified that the claimant received this injury on the job, no fellow worker corroborated the claimant's assertion that his injury occurred while on the job, and the claimant never reported any work related injury to his employer. Bechtel Corp. v. Phillips, 591 So. 2d 814, 1991 Miss. LEXIS 838 (Miss. 1991).

A determination that the death of an employee did not occur during the course of his employment so as to entitle his dependents to death benefits would be affirmed, where the employee died while on a fishing trip sponsored and financed by his employer who did nothing to cause employees to believe that they would lose anything by not attending, where no customers were entertained nor pep talks given on the trip, where no one was penalized in any way for not going or gained any advantage by going, and where there was nothing to indicate even indirect compulsion requiring the employee to go on the outing, the fact that the employer testified that one of the purposes was to promote better relationship between the company and his employees not being such a substantial benefit as to require a finding that the employee was within the course of his employment. Dependents of Staten v. Ewing Gas Co., 243 So. 2d 561, 1971 Miss. LEXIS 1519 (Miss. 1971).

Workmen's compensation benefits were denied a hand sander who allegedly injured his back when turning a heavy desk on a conveyor belt where two of the claimant's co-workers testified that he made no complaint to either of them at the time about being injured and, although he left work and went home, claimant did not go to a doctor for several days following the accident. Hamilton Mfg. Co. v. Kern, 242 So. 2d 441, 1970 Miss. LEXIS 1380 (Miss. 1970).

The evidence, including evidence that the claimant worked a full day on the day on which she claimed she was injured on the job, which was on a Friday, and worked all day on the following Tuesday, having seen the doctor on Monday whom she did not tell at the time that she had injured her back on the job, and testimony that the claimant had told three witnesses prior to the date of the claimed injury that she had fallen at home and hurt her back, was sufficient to support the commission's order denying workmen's compensation benefits. Cofer v. Garan, Inc., 235 So. 2d 251, 1970 Miss. LEXIS 1435 (Miss. 1970).

Claimant, employed as an insurance salesman and agent by the state agency for several companies, who maintained an office in his home, and fell, suffering injuries, when he arose from a chair to answer an expected business telephone call, was held not to have been injured in the course of his employment. Shoffner v. Vestal & Vernon Agency, 217 So. 2d 627, 1969 Miss. LEXIS 1573 (Miss. 1969).

An employee who, following his use of abusive language to a cafe waitress, was arrested for disturbing the peace and subsequently shot and killed by the arresting officer was not acting within the scope and course of his employment at the time of his death. Dennis Bros. Constr. Co. v. Dependents of Duett, 196 So. 2d 88, 1967 Miss. LEXIS 1476 (Miss. 1967).

A claimant who had a pre-existing ruptured disc and, as a consequence of his coughing or sneezing while driving a truck for his employer, suffered an additional back injury, was not entitled to compensation, for the cough or sneeze which caused the injury was completely unrelated to his employment as a truck driver. Malone & Hyde of Tupelo, Inc. v. Hall, 183 So. 2d 626, 1966 Miss. LEXIS 1429 (Miss. 1966).

Injuries to attorney who fell in shower in hotel where he was staying in order to investigate a case, held not to have arisen out of and in the course of his employment. Breland & Whitten v. Breland, 243 Miss. 620, 139 So. 2d 365, 1962 Miss. LEXIS 385 (Miss. 1962).

An insurance salesman who, while waiting to transport a customer to a doctor for medical examination, was injured when a shotgun, which he had taken from his car, accidentally discharged, did not receive an injury arising out of his employment. Earnest v. Interstate Life & Acci. Ins. Co., 238 Miss. 648, 119 So. 2d 782, 1960 Miss. LEXIS 450 (Miss. 1960).

Where an employee of a construction company was severely burned when tent he was occupying caught fire, and where he was not required to use the tent and no charge or reduction in wages was made on account of the tents which were donated to such employees as cared to avail themselves of them and at the time of injury the employee was off duty and free to go where he wished and he was not performing any service or complying with any order of the employer, the injury did not arise out of and in the course of employment. Thornton v. La.-Miss. Pipeline Const. Co., 214 Miss. 314, 58 So. 2d 795, 1952 Miss. LEXIS 472 (Miss. 1952).

18. Accidental injury or death.

That death resulted from an injury arising out of and in course of employment may be established by circumstantial evidence. L. B. Priester & Son, Inc. v. Dependents of Bynum, 247 Miss. 664, 157 So. 2d 399, 1963 Miss. LEXIS 340 (Miss. 1963).

Whether death was the result of an injury arising out of and in the course of employment is ordinarily a question of fact. L. B. Priester & Son, Inc. v. Dependents of Bynum, 247 Miss. 664, 157 So. 2d 399, 1963 Miss. LEXIS 340 (Miss. 1963).

Where the claim is based on a mental or nervous condition, an accident must be established by evidence bringing it in the realm of probability, and a causal connection proved by clear evidence. International Paper Co. v. Wilson, 243 Miss. 659, 139 So. 2d 644, 1962 Miss. LEXIS 391 (Miss. 1962).

A presumption of accident arising out of and in the course of employment arises where one is found dead or dying at a place where his duties required him to be, or where he might properly have been in the performance of his duties during hours of work, in the absence of evidence that he was not engaged in his employer's business. Shannon v. Hazlehurst, 237 Miss. 828, 116 So. 2d 546, 1959 Miss. LEXIS 538 (Miss. 1959).

The exertion which caused the accident need not have been of an unusual character. Shannon v. Hazlehurst, 237 Miss. 828, 116 So. 2d 546, 1959 Miss. LEXIS 538 (Miss. 1959).

An accidental injury need not result suddenly or from the immediate application of external force, but may accrue gradually over a reasonably definite and not a remote time. Shivers v. Biloxi-Gulfport Daily Herald, 236 Miss. 303, 110 So. 2d 359, 1959 Miss. LEXIS 320 (Miss. 1959).

The word "accident" has a generally accepted meaning as something happening without design and being unforeseen and unexpected to the person to whom it happens. L. B. Priester & Son v. McGee, 234 Miss. 471, 106 So. 2d 394, 1958 Miss. LEXIS 520 (Miss. 1958).

Whether or not an injury is accidental must be determined from the viewpoint of the employee. L. B. Priester & Son v. McGee, 234 Miss. 471, 106 So. 2d 394, 1958 Miss. LEXIS 520 (Miss. 1958).

19. —Entitled to benefits.

Where record showed that claimant was injured, in that his prior asthmatic condition was aggravated and accelerated because of the dust and chemicals he was forced to breathe while engaged in his employment, it was clear that the claimant's disability could be characterized as an accidental injury arising out of and in the course of his employment. Boyd v. State, 291 So. 2d 560, 1974 Miss. LEXIS 1729 (Miss. 1974).

Where claimant's condition grew progressively worse from 1963 to 1969, when he quit his job on the advice of two doctors, the injury may have been gradual, but it was clear that the working conditions aggravated his asthma and emphysema. Boyd v. State, 291 So. 2d 560, 1974 Miss. LEXIS 1729 (Miss. 1974).

The commission's findings that a registered nurse slipped and fell in the hospital corridor, striking her head, and that this was an accidental injury arising out of her employment, was warranted by the evidence, despite other evidence that the nurse had had epileptic seizures, although none for at least five years, and testimony of hospital employees that while walking past the office the claimant grabbed her throat and fell in a rigid position. Doctors Hospital of Jackson, Inc. v. Becker, 235 So. 2d 702, 1970 Miss. LEXIS 1460 (Miss. 1970).

A claimant who fainted while lifting a three-pound spool of thread above her head to place it on a knitting machine and, as a consequence, fell to the floor, sustained a back injury distinguishable from an injury resulting from an idiopathic level-floor fall, and was one for which she was entitled to compensation. Cooper's, Inc. of Mississippi v. Long, 224 So. 2d 866, 1969 Miss. LEXIS 1301 (Miss. 1969).

Where the evidence showed that the claimant had received an electrical shock in the course of her employment and the medical evidence revealed that she had been disabled since her accident, that her headaches, neck spasms, vomiting, and anxiety reaction were related to the electrical shock, and that an acute duodenal ulcer developed as a result of her taking medication for the relief of the symptoms caused by her shock, she was entitled to recover compensation for the conditions which bore a causal relationship to the original accident. Burnley Shirt Corp. v. Simmons, 204 So. 2d 451, 1967 Miss. LEXIS 1195 (Miss. 1967).

Claimant who sustained a severe strain in the course of her employment, resulting in a cystocele, a rectocele, and a prolapsed uterus, making her wholly unfit for the work which she had previously been doing, had sustained permanent partial disability entitling her to compensation benefits for 450 weeks. Mississippi Nursing

Home v. Sessums, 253 Miss. 797, 180 So. 2d 157, 1965 Miss. LEXIS 1052 (Miss. 1965).

A claimant employed in a packing house, who incurred on his job numerous cuts and scratches while handling the waste products from slaughtered animals and as a consequence contracted brucelosis or undulant fever, had sustained a compensable accidental injury. Mid-South Packers, Inc. v. Hanson, 253 Miss. 703, 178 So. 2d 689, 1965 Miss. LEXIS 1035 (Miss. 1965).

An award is permissible in the case of one who, while engaged in heavy manual labor on a hot day and whose health had previously been good, collapsed at his place of work and died of what may have been a heat stroke, though at first diagnosed as a coronary occlusion. Winters Hardwood Dimension Co. v. Dependents of Harris, 236 Miss. 757, 112 So. 2d 227, 1959 Miss. LEXIS 373 (Miss. 1959).

That employee having a heart disease had been told by his employer not to do any heavy lifting, inadvertently over-exerted himself on the job, does not deprive the occurrence of an accidental character. Shivers v. Biloxi-Gulfport Daily Herald, 236 Miss. 303, 110 So. 2d 359, 1959 Miss. LEXIS 320 (Miss. 1959).

A heart attack suffered by a construction worker who had had one four years before but who had no reason to expect a recurrence, while working with a companion on a scaffold with chisel and hammer to cut metal overhead, held an accidental injury for which compensation is allowable. L. B. Priester & Son v. McGee, 234 Miss. 471, 106 So. 2d 394, 1958 Miss. LEXIS 520 (Miss. 1958).

An employee who, although having had one heart attack, had been able to satisfactorily work more or less constantly for two and a half years could not be said to have such intention or expectation of a second heart attack on the particular date of his injury as to strip the occurrence of its accidental character. L. B. Priester & Son v. McGee, 234 Miss. 471, 106 So. 2d 394, 1958 Miss. LEXIS 520 (Miss. 1958).

Under conflicting evidence, an award of compensation to claimant for injuries to his teeth, without any award for injuries to his coccyx sacrum and rectum, was affirmed. Fondren v. Fortenberry Drilling Co., 233 Miss. 210, 101 So. 2d 654, 1958 Miss. LEXIS 373 (Miss. 1958).

Where an employee in a bakery suffered a disability caused by allergy resulting from his contact with a baker's pad or mitten which he was required to use in handling hot pans of bread as they came from the oven, this disability resulted from accidental injury within purview of Workmen's Compensation Law rather than from an occupational disease. Hardin's Bakeries, Inc. v. Ranager, 217 Miss. 463, 65 So. 2d 461, 1953 Miss. LEXIS 453 (Miss. 1953).

Where an employee suffered a heart attack shortly after he and two other men lifted an end of iron pipe, weighing approximately a thousand pounds, and this resulted in a coronary occlusion, this heart attack was accidental and compensable. La Dew v. La Borde, 216 Miss. 598, 63 So. 2d 56, 1953 Miss. LEXIS 674 (Miss. 1953).

20. —Not entitled to benefits.

Substantial evidence supported the Mississippi Workers' Compensation Commission's finding that an employee was unable to show that limitations on her ability to perform manual labor had any impact on her ability to perform the duties of her employment or resulted in a loss of wage-earning capacity because the employee had a history of employment in sedentary, clerical positions, supporting a reasonable inference that a restriction to light-duty work would not be a hindrance to her. Weathersby v. Miss. Baptist Health Sys., 195 So. 3d 877, 2016 Miss. App. LEXIS 421 (Miss. Ct. App. 2016).

Mississippi Workers' Compensation Commission did not err in finding that an employee failed to prove she suffered a permanent disability because the presumption of no loss of wage-earning capacity applied since her post-injury wages were the same as her pre-injury wages; the employee failed to rebut the presumption because she presented no evidence of an increase in wage levels since her injury, that she was working additional hours, or that she was being paid out of her employer's sympathy. Weathersby v. Miss. Baptist Health Sys., 195 So. 3d 877, 2016

Miss. App. LEXIS 421 (Miss. Ct. App. 2016).

Although conflicting, lay and medical evidence supported finding of commission that claimant's anxiety neurosis did not result from accidental injury. Mississippi Products, Inc. v. Skipworth, 238 Miss. 312, 118 So. 2d 345, 1960 Miss. LEXIS 407 (Miss. 1960).

Death of truck driver drowned when truck went into a river is not compensable where there is no proof of what his duties were or where he was required to perform them. Erwin v. Hayes, 236 Miss. 123, 109 So. 2d 156, 1959 Miss. LEXIS 301 (Miss. 1959).

In a proceeding for death benefits, evidence sustained the workmen's compensation commission's finding that the deceased, at the date of his injury, was not an employee of the company against whom the claim was asserted, and that the persons for whom deceased was working were not employees of the company. Estate of Oatis v. Williamson & Williamson Lumber Co., 230 Miss. 270, 92 So. 2d 557, 1957 Miss. LEXIS 367 (Miss. 1957).

Under evidence tending to establish that claimant's injuries were sustained while in the employment of a former employer rather than the employer against whom proceedings for workmen's compensation benefits was instituted, and that the work done while in the employment of the latter did not aggravate his injury, finding of the workmen's compensation commission that claimant failed to show that he had sustained an accidental injury was supported by substantial evidence. Anderson v. Ingalls Shipbuilding Corp., 229 Miss. 670, 91 So. 2d 756, 1957 Miss. LEXIS 313 (Miss. 1957).

21. Causal relation.

Despite the fact that an administrative law judge held an employee to the correct burden of proof with regard to her claim for workers' compensation benefits based on depression and anxiety secondary to an accident, the record lacked substantial evidence to support a finding that the employee was entitled to benefits because the medical record did not indicate that her condition was the result of the accident. Hosp. Housekeeping Sys. v. Townsend, 993 So. 2d 418, 2008 Miss. App. LEXIS 405 (Miss. Ct. App. 2008).

An injured construction worker was a statutory employee of the general contractor where the worker was the son of the carpentry subcontractor, the subcontractor did not have a workers' compensation insurance policy in effect at the time of the injury, and the general contractor had been advised of the subcontractor's lack of insurance prior to the date of the injury. Vance v. Twin River Homes, 641 So. 2d 1176, 1994 Miss. LEXIS 373 (Miss. 1994).

The mere presence of an employee on the premises where his work is to be performed is not enough to establish the required causal connection between the employee's injury and the conditions under which his work is to be performed. Jefferson v. T. L. James & Co., 420 F.2d 322, 1969 U.S. App. LEXIS 9766 (5th Cir. Miss. 1969).

An employee's usual routine upon reaching the place of business where he worked is irrelevant, and an expert medical witness, in response to a hypothetical question, should not take into consideration "an invariable practice" unless it was proved that the employee followed that routine on the occasion when his death resulted. Washington v. Greenville Mfg. & Machine Works, 223 So. 2d 642, 1969 Miss. LEXIS 1285 (Miss. 1969).

It is doubtful that a presumption of causal connection arises at all unless the claimant dies, because, if he lives, it is within his power, and it is his duty, to meet the burden of showing that his injury arose out of and in the course of his employment. Kersh v. Greenville Sheet Metal Works, 192 So. 2d 266, 1966 Miss. LEXIS 1239 (Miss. 1966).

While the burden of proof is on the claimant, there is created a rebuttable presumption of work connection in the case of an unexplained death while on the job. L. B. Priester & Son, Inc. v. Bynum, 244 Miss. 185, 137 So. 2d 907, 1962 Miss. LEXIS 438 (Miss. 1962).

Since a claim for disability is separate and distinct from a claim for death benefits, the 1960 amendment to subsection (9) of Code 1942, § 6998-02 [now subsection (i) of Code 1972, § 71-3-3], requiring that incapacity and the extent thereof be supported by medical findings, did not eliminate the presumption of causal connection between the employment and death occurring while the employee is engaged in the duties of his employment, particularly since the 1960 amendment did not affect subsection (3) of Code 1942, § 6998-02 [now subsection (c) of Code 1972, § 71-3-3]. L. B. Priester & Son, Inc. v. Bynum, 244 Miss. 185, 137 So. 2d 907, 1962 Miss. LEXIS 438 (Miss. 1962).

An injury arises out of the employment when there is a causal connection between it and the job. M. & W. Constr. Co. v. Dependents of Bugg, 241 Miss. 133, 129 So. 2d 631, 1961 Miss. LEXIS 324 (Miss. 1961).

In all but simple cases medical causation must be established by expert testimony. Cole v. Superior Coach Corp., 234 Miss. 287, 106 So. 2d 71, 1958 Miss. LEXIS 488 (Miss. 1958).

Burden of proof is on claimant to prove causal connection between employment and injury. Sullivan v. C. & S. Poultry Co., 234 Miss. 126, 105 So. 2d 558, 1958 Miss. LEXIS 473 (Miss. 1958).

It is not necessary to show that the exertion which occurred in precipitating the harm was not in itself unusual or beyond the routine of the employment, but, provided the causal relationship to the employment is shown, aggravating, precipitating, or combining with the disease or infirmity to produce death, the exertion may be usual and customary, and still satisfy the requirement that injury be accidental and arise out of the employment. Poole v. R. F. Learned & Son, 234 Miss. 362, 103 So. 2d 396, 1958 Miss. LEXIS 503 (Miss.), modified, Poole v. R. F. Learned & Sons, 234 Miss. 362, 105 So. 2d 162, 1958 Miss. LEXIS 504 (Miss. 1958).

The work of an employee need only be a contributing cause, not the sole cause of the injury, in order that the injury may be deemed to arise out of and in the course of his employment. Prince v. Nicholson, 229 Miss. 718, 91 So. 2d 734, 1957 Miss. LEXIS 318 (Miss. 1957).

It is not necessary to show that the exertion which occurred in precipitating the harm was in itself unusual or beyond the routine of the employment, provided the causal relation is shown; the exertion may be usual and customary and still satisfy the requirements that the injury be accidental and arise out of employment. W. G. Avery Body Co. v. Hall, 224 Miss. 51, 79 So. 2d 453, 1955 Miss. LEXIS 459 (Miss. 1955).

An injury arises out of employment when, but only when, there is a causal connection between such injury and the conditions under which the work is required to be performed; it is not sufficient that the employee is at the place of his employment at the time of the accident and doing his usual work. Brookhaven Steam Laundry v. Watts, 214 Miss. 569, 55 So. 2d 381, 1951 Miss. LEXIS 521 (Miss. 1951).

22. —Causal connection established.

Finding that workers' compensation benefits were wrongfully denied to the employee was appropriate because the case was doubtful as to whether the existence of any real or imagined relationship between the former coworker and the employee was the sole cause of the employee's injuries; doubtful claims were to be resolved in favor of compensation. Int'l Staff Mgmt. & Legion Ins. Co. v. Stephenson, 46 So. 3d 367, 2010 Miss. App. LEXIS 128 (Miss. Ct. App.), cert. denied, 49 So. 3d 636, 2010 Miss. LEXIS 564 (Miss. 2010).

The Workers' Compensation Commission's finding that the claimant's exposure to chemicals in his employment did not result in an injury was not based on substantial evidence since (1) there was no doubt that the claimant suffered an injury, (2) the connections between the claimant's work environment and his health were simply too numerous to be purely coincidental, and (3) although the claimant was better, his future employment was limited in general and he was permanently restricted from working around such chemicals as found at his employment. Sharpe v. Choctaw Elecs. Enters., 767 So. 2d 1002, 2000 Miss. LEXIS 208 (Miss. 2000).

A doctor's inability to pinpoint the exact physical cause of an employee's disability did not alone defeat the employee's claim for compensation, given the beneficent purpose of the Workers' Compensation

Act, where there was uncontradicted testimony that the employee was injured while performing his job and that he was totally and permanently disabled. Trest v. B.C. Rogers Processors, Inc., 592 So. 2d 110, 1991 Miss. LEXIS 981 (Miss. 1991).

The evidence established that the employee's death, caused by an overdose of medication combined with alcohol consumption, resulted from a mental disturbance which resulted from his job-related injury; there was insufficient evidence to conclude that the employee's death had been the result of an independent intervening cause. Kelly Bros. Contractors, Inc. v. Windham, 410 So. 2d 1322, 1982 Miss. LEXIS 1886 (Miss. 1982).

Where record showed that claimant was injured, in that his prior asthmatic condition was aggravated and accelerated because of the dust and chemicals he was forced to breathe while engaged in his employment, it was clear that the claimant's disability could be characterized as an accidental injury arising out of and in the course of his employment. Boyd v. State, 291 So. 2d 560, 1974 Miss. LEXIS 1729 (Miss. 1974).

Where it was found as a matter of law that a deceased employee's death from a heart attack was causally related to the duties of his employment, such finding contained the implicit finding that the duties of employment substantially contributed to his death and an order awarding nominal compensation to the decedent's dependents of one percent or $125, would be reversed, since a mere nominal sum may not be awarded when there is liability for death benefits. Dependents of Barrett v. Leake County Cooperative (A. A. L.), 249 So. 2d 387, 1971 Miss. LEXIS 1161 (Miss. 1971).

The overwhelming weight of the evidence reflected that a stroke suffered by a 40-year-old driver of a large tractor-trailer truck, whose job involved responsibility and sustained concentration over many hours, as well as substantial physical effort and mental strain, was causally related to the stress and strain of his job, which aggravated his pre-existing condition of a congenital aneurism. Dean Truck Line, Inc. v. Wilkes, 248 So. 2d 462, 1971 Miss. LEXIS 1474 (Miss. 1971).

23. — —Causal connection not established.

Benefits denied where the testimony of four doctors was inconclusive as to a causal link between claimant's respiratory injuries and his working conditions at employer electronics company. Sharpe v. Choctaw Elecs. Enters., 753 So. 2d 1127, 1999 Miss. App. LEXIS 704 (Miss. Ct. App. 1999).

A finding by the Workers' Compensation Commission that an injured manual laborer who was restricted by his doctor to lifting less than 40 pounds suffered only minimal industrial incapacity was not supported by substantial evidence where the decision was based largely on an alleged policy of the employer requiring workers to seek assistance when lifting more than 40 pounds, but the record contained no evidence of such a policy. DeLaughter v. South Cent. Tractor Parts, 642 So. 2d 375, 1994 Miss. LEXIS 367 (Miss. 1994).

The circuit court did not err in reversing the Workers' Compensation Commission's finding that a claimant with a back injury had reached maximum medical improvement and suffered no permanent disability where there was evidence that the claimant had 2 ruptured discs surgically removed, specialists who initially concluded that the claimant had no ruptured discs did not later examine him after the discovery of the ruptured discs was made, and the employer failed to show that the claimant suffered any disassociated intervening injury which caused the ruptured discs, their surgical removal and the resulting disability. Marshall Durbin Cos. v. Warren, 633 So. 2d 1006, 1994 Miss. LEXIS 33 (Miss. 1994).

The evidence supported a finding that the decedent was under no physical or mental strain when he suffered a heart attack, while engaged in using a screwdriver to adjust the buttonhole chute on a sewing machine, and further supported the conclusion that there was no causal connection between employment and death. McCarley v. Iuka Shirt Co., 258 So. 2d 421, 1972 Miss. LEXIS 1499 (Miss. 1972).

24. —Heart cases.

Where one is subjected to extraordinary mental and physical stress and strain brought about by one's employment, his resulting heart attack does not become noncompensable, just because it is constant and occurs over a period of several months. Mississippi Research & Development Center v. Dependents of Shults, 287 So. 2d 273, 1973 Miss. LEXIS 1331 (Miss. 1973).

The presumption that a heart attack while at work is work-connected is not conclusive, but may be rebutted by proof of circumstances. Mississippi Highway Patrol v. Dependents of Neal, 239 Miss. 505, 124 So. 2d 120, 125 So. 2d 544, 1960 Miss. LEXIS 315 (Miss. 1960); Meridian Mattress Factory, Inc. v. Morris, 239 Miss. 792, 125 So. 2d 533, 1960 Miss. LEXIS 355 (Miss. 1960).

A causal connection between the employment and the injury or death may be found when the outset of a heart attack occurs while the employee is about his work. Russell v. Sohio Southern Pipe Lines, Inc., 236 Miss. 722, 112 So. 2d 357, 1959 Miss. LEXIS 369 (Miss. 1959).

A conflict in medical testimony as to whether an accidental burn suffered by the claimant while engaged in his duties together with the resultant anticipated treatment thereof was causally related to, and precipitated, the claimant's heart attack only made an issue of fact to be decided by the attorney-referee and the commission. Harper Foundry & Machine Co. v. Harper, 232 Miss. 873, 100 So. 2d 779, 1958 Miss. LEXIS 342 (Miss. 1958).

It was for the determination of the referee and workmen's compensation commission as to whether or not wielding a paint brush for 9 or 10 hours a day with 1 hour out for lunch would constitute an unusual exertion or strain so as to bring about or contribute to the employee's death from coronary thrombosis about 4 hours after he had left the job and thus constitute a compensable injury under the Workmen's Compensation Law. Dillon v. Gasoline Plant Constr. Corp., 222 Miss. 10, 75 So. 2d 80, 1954 Miss. LEXIS 610 (Miss. 1954).

25. — —Benefits awarded.

Where a 60-year old employee suffered several fractures to his hip in addition to compression of his L-4 vertebra and could no longer withstand the duties of longhaul trucking, ample evidence existed to support the Mississippi Workers' Compensation Commission's finding that he suffered a loss of wage earning capacity of $ 400 per week. The undisputed testimony demonstrated that he earned half of his regular salary as a long-haul truck driver while driving short hauls or working in the loading and packing divisions, and that he had sought light duty work from both his employer and his union, but that none was offered; thus, an award of permanent partial disability benefits was proper. Alumax Extrusions, Inc. v. Hankins, 902 So. 2d 586, 2004 Miss. App. LEXIS 957 (Miss. Ct. App. 2004).

Benefits were properly awarded where there was no credible medical opinion testimony to the effect that employee's death, even assuming it to have been the result of a heart attack, was not caused at least in part by his work activities. Road Maintenance Supply, Inc. v. Dependents of Maxwell, 493 So. 2d 318, 1986 Miss. LEXIS 2537 (Miss. 1986).

A causal connection existed between the death of an employee who suffered a fatal heart attack while driving a truck along a highway and his employment where the evidence established that his heart was seriously impaired by a childhood attack of rheumatic fever, that he had nearly died from another heart attack which had occurred approximately a month prior to his death, and his physician testified that any activity on the part of the decedent could very likely have contributed to his death. Leake County Cooperative v. Dependents of Barrett, 226 So. 2d 608, 1969 Miss. LEXIS 1306, 1969 Miss. LEXIS 1307 (Miss. 1969).

Where decedent, secretary-manager of a state association of insurance agents, shown to be a perfectionist, easily upset, high-strung and nervous, under constant physical and emotional stress, was found dead in bed in his hotel room as the result of a heart attack following a day spent participating in a convention which he attended as a part of his duties, there was sufficient and substantial evidence to sustain a conclusion that his death was causally connected with his work and was brought on by his physical and emotional stress and strain in the performance of his duties; and his dependents were entitled to compensation, subject to apportionment on account of a pre-existing infirmity. Miss. Ass'n of Ins. Agents, Inc. v. Dependents of Seay, 218 So. 2d 413, 1969 Miss. LEXIS 1597 (Miss. 1969).

Where he had the duty of closing the shop, and sometimes worked overtime, there was a presumption of causal connection between the employment and the death of a shop foreman who was found dead from a heart attack a few minutes later than the normal Saturday shop closing time, and this presumption was not eliminated by the 1960 amendment to subsection (9) of Code 1942, § 6998-02 [now subsection (i) of Code 1972, § 71-3-3] requiring that incapacity and the extent thereof must be supported by medical findings. L. B. Priester & Son, Inc. v. Bynum, 244 Miss. 185, 137 So. 2d 907, 1962 Miss. LEXIS 438 (Miss. 1962).

Award of compensation for death of a garment factory employee from heart failure may be found connected with work where there is medical testimony that anything the employee might do would have aggravated her condition. I. B. S. Mfg. Co. v. Dependents of Cook, 241 Miss. 256, 130 So. 2d 557, 1961 Miss. LEXIS 341 (Miss. 1961).

A coronary thrombosis with which a bookkeeper was seized while at work may be found to have been connected therewith where there was evidence that he had occasion to go up a flight of 19 steps during the morning, had worked until 8 o'clock on the evening before, and that absence of his superiors on the day in question may have increased his duties. Meridian Mattress Factory, Inc. v. Morris, 239 Miss. 792, 125 So. 2d 533, 1960 Miss. LEXIS 355 (Miss. 1960).

Where the testimony of heart specialist testifying on behalf of claimants and the employer and its insurance carrier clearly showed that regular work such as deceased was doing as the sole attendant of a busy filling station would aggravate the deceased's heart condition, the conclusion of the workmen's compensation commission that complainants had failed to prove that the death of the deceased arose out of and in the course of his employment was against the weight of the evidence. Lewis v. Trackside Gasoline Station & Pacific Indem. Co., 233 Miss. 663, 103 So. 2d 868, 1958 Miss. LEXIS 429 (Miss. 1958).

Where it appeared that a mechanic, who had a pre-existing heart ailment, suffered a fatal attack while driving to a nearby farm to repair a cotton picker as directed by the shop foreman, testimony of lay witnesses and a medical expert, who appeared to be of the opinion that the heart attack which the deceased suffered was probably precipitated by the work that he was performing, was sufficient to justify an award to claimants, although another medical expert had testified that in his opinion there was no causal relationship between the deceased's employment during the day and his death. Goodnite v. Farm Equipment Co., 234 Miss. 342, 103 So. 2d 391, 1958 Miss. LEXIS 563 (Miss. 1958).

Medical testimony supported the finding that an accidental burn suffered by the claimant while engaged in his duties together with the resultant and anticipated treatment thereof was causally related to, and precipitated, the claimant's heart attack. Harper Foundry & Machine Co. v. Harper, 232 Miss. 873, 100 So. 2d 779, 1958 Miss. LEXIS 342 (Miss. 1958).

Under the evidence, including medical testimony, the attorney-referee and the commission properly found that the activities of the deceased as a butcher or market man in the meat department of the employer's store caused the deceased's fatal heart attack, and it was not necessary that the claimants show that the deceased had had a pre-existing heart condition or other physical infirmity which could have been aggravated by the work of the deceased. Pennington v. Smith, 232 Miss. 775, 100 So. 2d 569, 1958 Miss. LEXIS 328 (Miss. 1958).

The commission's finding that manual labor performed by a worker in the course of his employment with a lumber company was a precipitating cause of the worker's death due to coronary thrombosis was sustained by evidence, consisting substantially of the response of a medical specialist in cardiology and internal medicine to hypothetical questions. Lee v. Haltom Lumber Co., 230 Miss. 655, 93 So. 2d 641, 1957 Miss. LEXIS 407 (Miss. 1957).

Where the weight of the evidence established that claimant's heart attacks came upon him while he was in the performance of the duties of his employment, which caused physical strain and exertion, and it was undisputed that he was presently disabled from the performance of the work in which he was engaged at the time he suffered the attacks, the workmen's compensation commission's finding, under conflicting medical testimony, that there was a causal connection between the claimant's heart attacks and his work was affirmed. Ingalls Shipbuilding Corp. v. Dickerson, 230 Miss. 110, 92 So. 2d 354, 1957 Miss. LEXIS 350 (Miss. 1957).

26. — —Benefits denied.

Where a deceased workman, retained by a shellfish processing company to do odd jobs, was observed doing no more than moving about and sitting down on the day of his death before he suffered an apparent myocardial infarction, and there was no evidence to show that he "over-extended" himself, and in fact medical opinion testimony was to the contrary, there was sufficient evidence to rebut the presumption of causal connection with employment, and the commission was justified in its conclusion that the death was not compensable. Hungerford v. Southern Shell Fish Co., 230 So. 2d 59, 1969 Miss. LEXIS 1260 (Miss. 1969).

Where it was not shown that employee had devoted any part of his time on the date of death to the duties of his employment, the evidence was insufficient to show that death at home in bed from myocardial infarction arose out of his employment as office manager. Dependents of Moon v. Erwin Mills, Inc., 244 Miss. 573, 145 So. 2d 465, 1962 Miss. LEXIS 478 (Miss. 1962).

Evidence held to warrant conclusion that death from coronary occlusion was not service-connected. Itawamba Mfg. Co. v. Dependents of Christian, 244 Miss. 587, 145 So. 2d 161, 1962 Miss. LEXIS 481 (Miss. 1962).

Where it was not shown that an employee's exertion in and about the duties of his employment contributed to or precipitated the heart attack which resulted in his death, the commission was not in error in denying a claim for compensation. Rushing v. Water Valley Coca Cola Bottling Co., 232 Miss. 338, 98 So. 2d 870, 1957 Miss. LEXIS 481 (Miss. 1957).

Commission's order denying compensation payments for the decedent's death caused by heart attack, which was predicated upon the ground that death was not causally related to the activities of his employment, was affirmed, where there was abundant medical evidence in support thereof. Halbert v. Lamar Advertising Agency, 231 Miss. 437, 95 So. 2d 535, 1957 Miss. LEXIS 528 (Miss. 1957).

In a workmen's compensation proceeding for death benefits, evidence sustained the commission's finding that the death of an employee caused by a heart condition was not attributable to the work of the employee's employment, and, thus, not compensable. Freeman v. Mississippi Power & Light Co., 230 Miss. 396, 92 So. 2d 658, 1957 Miss. LEXIS 382 (Miss. 1957).

27. —Cerebral or vascular accidents.

Substantial evidence supported the commission's finding that there was a causal connection between the employee's stooping and lifting a box weighing 60 to 70 pounds and the cerebral hemorrhage which he suffered the following day. Walker Mfg. Co. v. Pickens, 206 So. 2d 639, 1968 Miss. LEXIS 1583 (Miss. 1968).

In view of medical testimony, the finding of the workmen's compensation commission and the circuit court that there was no causal connection or relationship between the decedent's employment duties and the rupture of the aneurysm causing his death was not supported by substantial evidence. Dependent of Payton v. Armstrong Tire & Rubber Co., 250 Miss. 407, 165 So. 2d 336, 1964 Miss. LEXIS 471 (Miss. 1964).

Evidence held to warrant findings that death, in hotel room of traveling salesman who suffered from hypertension, chronic bronchitis and high blood pressure, was not connected with his employment. Moore v. Hederman Bros., 240 Miss. 358, 127 So. 2d 647, 1961 Miss. LEXIS 469 (Miss. 1961).

A finding that the death of a shipyard worker who became ill while operating a pneumatic chipper was not connected with his employment is warranted where medical evidence was that he died of a rupture of a probable congenital intracranial aneurysm. Druey v. Ingalls Shipbuilding Corp., 237 Miss. 277, 114 So. 2d 772, 1959 Miss. LEXIS 465 (Miss. 1959).

Claimant, a 60-year-old female office worker whose duties were both executive and clerical, shown by the evidence to be a perfectionist, irritable and high tempered, suffering from extreme hypertension and with a history of two previous strokes, who suffered a cerebral thrombosis while at work, was entitled to compensation on the basis that the work she performed in the course of her employment, and the manner in which she performed it, aggravated her hypertension and was one of the factors which contributed to the attack which caused her disability. Insurance Dep't of Mississippi v. Dinsmore, 233 Miss. 569, 104 So. 2d 296, 1958 Miss. LEXIS 420 (Miss. 1958).

Where the truck driver accidentally lacerated his leg on June 26, 1954, causing considerable bleeding, which continued to some extent even after medical attention, and following his release by the doctor to return to work, on July 5, 1954, the employee reported to work on July 9, 1954, while suffering from dizzy spells, and died on July 16th, 1954, as result of bleeding to death from a massive gastrointestinal hemorrhage and malignant hypertension, the attorney-referee's finding that death was not related to the injury of June 26th, the workmen's compensation commission's order affirming the finding, as well as the circuit court's affirming order, was not supported by substantial evidence and would be reversed. Williams v. Vicksburg Wholesale Poultry Co., 233 Miss. 384, 102 So. 2d 378, 1958 Miss. LEXIS 395 (Miss. 1958).

Contention that there was no causal connection between claimant's work and his stroke, but that it was brought on by horseplay in which the claimant was aggressor, was not sustained by evidence that the claimant grabbed at the leg or pants leg of his coworker to keep from falling when the attack came on him, and the uncontradicted testimony of two doctors was to the effect that such act on the part of the claimant was not sufficiently strenuous to bring on or precipitate the claimant's attack. Prince v. Nicholson, 229 Miss. 718, 91 So. 2d 734, 1957 Miss. LEXIS 318 (Miss. 1957).

In a workman's compensation proceeding for a death benefit, evidence on the issue of whether exertion which was caused by employee's stooping and bending to pick tung nuts from the ground had contributed to employee's high blood pressure so as to precipitate a cerebral hemorrhage, did not justify a denial of claim for compensation. Cowart v. Pearl River Tung Co., 218 Miss. 472, 67 So. 2d 356, 1953 Miss. LEXIS 563 (Miss. 1953), limited, Dillon v. Gasoline Plant Constr. Corp., 222 Miss. 10, 75 So. 2d 80, 1954 Miss. LEXIS 610 (Miss. 1954).

Where exertion contributes to, aggravates or accelerates high blood pressure so as to precipitate accident complained of, the claim is compensable. Cowart v. Pearl River Tung Co., 218 Miss. 472, 67 So. 2d 356, 1953 Miss. LEXIS 563 (Miss. 1953), limited, Dillon v. Gasoline Plant Constr. Corp., 222 Miss. 10, 75 So. 2d 80, 1954 Miss. LEXIS 610 (Miss. 1954).

28. —Mental or nervous disease.

A claimant failed to make the requisite showing that her mental condition was causally connected to her employment where 2 doctors testified that the claimant had suffered from psychological disorders prior to the incident alleged to have caused her mental injury, the Workers' Compensation Commission found the testimony of another doctor, who diagnosed the claimant as having severe post-traumatic stress disorder and major depression with some psychotic symptoms, to be unconvincing, and the incident alleged to have caused the claimant's mental injury-a private meeting with her supervisor during which the supervisor threatened to fire her-was not an "untoward event." Bates v. Countrybrook Living Center, 609 So. 2d 1247, 1992 Miss. LEXIS 589 (Miss. 1992).

The evidence was sufficient to support the Workers' Compensation Commission's finding that an employee's mental disability was caused by a deliberate course of conduct by his employer and that there was nothing in his psychological background to suggest a pre-existing personality disorder, so that the stresses to which the employee was subjected were "more than the ordinary incidents of employment" and were "untoward events or unusual occurrences" culminating in his subsequent disability, where a psychiatrist who treated the employee for over 2 years testified that the employee was psychologically disabled and that his work played a significant part in causing it, and testimony from the employee, the employee's wife, and fellow employees established a protracted pattern by the employer to put pressure and stress upon the employee. Borden, Inc. v. Eskridge, 604 So. 2d 1071, 1991 Miss. LEXIS 795 (Miss. 1991).

In order to be compensable, a mental injury, unaccompanied by physical trauma, must have been caused by something more than the ordinary incidents of employment. Fought v. Stuart C. Irby Co., 523 So. 2d 314, 1988 Miss. LEXIS 86 (Miss. 1988).

Mental injury of worker unaccompanied by physical trauma is not directly linked to untoward event, unusual occurrence, accident or injury incident to employment, as required for worker to be entitled to worker's compensation benefits, where worker claims that mental injury results from termination of worker due to business conditions eliminating need for worker's employment; if worker were entitled to benefits at all, it would only be to apportioned benefits if worker has long history of mental and emotional disorders prior to termination. Smith & Sanders, Inc. v. Peery, 473 So. 2d 423, 1985 Miss. LEXIS 2159 (Miss. 1985).

A claimant who was suffering from psychophysiological muscle spasms following physical injuries to his back and leg sustained as a result of a vehicular collision which occurred in the course of his employment was entitled to receive temporary total disability benefits where the evidence showed that the accident triggered his disability. Phillips v. Skinner, 219 So. 2d 167, 1969 Miss. LEXIS 1420 (Miss. 1969).

Pain without organic cause that is no longer due to the effects of claimant's back injury from which he has fully recovered is not due to the effects of the injury but is due to claimant's disturbed mental state which arises from other unconnected factors and is not compensable. Merchants Co. v. Moore, 197 So. 2d 791, 1967 Miss. LEXIS 1536 (Miss. 1967).

A claimant asserting that a mental or nervous disease has resulted from an industrial accident must show the causal connection between the accident and the psychoneurosis by clear evidence, and where the evidence showed that the claimant truck driver had, as a consequence of a highway collision, suffered an emotional trauma which made it impossible thereafter to engage in that occupation, he was entitled to compensation benefits. Miller Transporters, Ltd. v. Reeves, 195 So. 2d 95, 1967 Miss. LEXIS 1440 (Miss. 1967).

That the claimant had what was described as an epileptic seizure while driving an automobile in the course of his employment, resulting in an accident in which he was injured, does not affect his right to compensation, for although the seizure was personal to him the injury arose from the risks of travel. Aetna Finance Co. v. Bourgoin, 252 Miss. 852, 174 So. 2d 495, 1965 Miss. LEXIS 1154 (Miss. 1965).

Where the claimant suffered from a depressive reaction brought about as the result of losing his job rather than as the result of an industrial accident he was not entitled to recover compensation, for the rule is that in order for a claim for compensation to be based on a mental or nervous disease an industrial accident must be established to bring it within the realm of probability, and causal connection with the accident must be proved by clear evidence. Powers v. Armstrong Tire & Rubber Co., 252 Miss. 717, 173 So. 2d 670, 1965 Miss. LEXIS 1142 (Miss. 1965).

Incapacity to work because of emotional disturbance not shown to be connected with employment is not compensable. Johnson v. Gulfport Laundry & Cleaning Co., 249 Miss. 11, 162 So. 2d 859, 1964 Miss. LEXIS 370 (Miss. 1964).

29. —Other disabilities.

The evidence was sufficient to support the Workers' Compensation Commission's finding that a claimant's hypertension was work-related, thus obliging the claimant's former employer to pay for medical expenses incurred by the claimant for periodic checkups for his hypertensive condition as ordered by his treating physician, where the claimant began to experience tension, anxiety and stomach problems, which the physician diagnosed as hypertension, during the time the claimant worked for the employer, and the physician concluded that the claimant's job caused him to experience significant stress which aggravated his hypertensive condition so as to require him to take a medical leave of absence. Berry v. Universal Mfg. Co., 597 So. 2d 623, 1992 Miss. LEXIS 151 (Miss. 1992).

The evidence was sufficient to support a finding by the Workers' Compensation Commission that noise at an employee's work site was a contributing, precipitating, or aggravating factor in the production of Meniere's Syndrome, even though the etiology of Meniere's Syndrome is largely unknown, where there was substantial evidence that exposure to high intensity noise for a period of years at the work site contributed to, aggravated or accelerated the employee's condition, and this evidence was not controverted by any direct medical evidence. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250, 1991 Miss. LEXIS 763 (Miss. 1991).

Where it was shown that the claimant suffered from a mild case of asthma when he began working in 1963, but could ably perform his labor, that he complained of breathing difficulties in 1964, that in 1965 he was treated for emphysema, that he was hospitalized in 1968 for emphysema, and that in 1969, his condition had progressed to the stage where he was advised by doctors to quit his job, it was apparent that such dates would supply the necessary evidence for proving that claimant's gradual injury occurred within a reasonably definite and not too remote period of time. Boyd v. State, 291 So. 2d 560, 1974 Miss. LEXIS 1729 (Miss. 1974).

The fact that a claimant's chest pain began when she lifted a ten-pound sack of potatoes while working at a market, and medical testimony that the pain she experienced was consistent with a herniated thoracic disc, as indicated in X-ray reports, together constituted sufficient medical evidence of a causal connection between the claimant's injury and her subsequent disability, despite other testimony suggesting that a rupture of the disc would not have occurred from the lifting of such a weight unless there was a preexisting disease. Better Living Markets, Inc. v. Smith, 241 So. 2d 152, 1970 Miss. LEXIS 1325 (Miss. 1970).

In the absence of the establishment of a causal relationship between claimant's fall from a ladder and an ulcerative colitis condition which subsequently developed, his claim for total and permanent disability was denied. Contract Trucking Co. v. May, 254 Miss. 925, 183 So. 2d 488, 1966 Miss. LEXIS 1588 (Miss. 1966).

Evidence held sufficient to warrant finding of causal relation between injury and death. Futorian-Stratford Furniture Co. v. Dependents of Oswalt, 249 Miss. 35, 162 So. 2d 645, 1964 Miss. LEXIS 373 (Miss. 1964).

Evidence of medical experts held to warrant commission in finding that inability of claimant to work was attributable solely to a condition not related to his injury. Bates v. Merchants Co., 249 Miss. 174, 161 So. 2d 652, 1964 Miss. LEXIS 384 (Miss. 1964).

Evidence held to show that knee disability was connected with injury to shin. Kennedy v. Williams-McWilliams Industries, Inc., 247 Miss. 595, 156 So. 2d 806, 1963 Miss. LEXIS 329 (Miss. 1963).

Evidence, including medical testimony, established that the fact that claimant's body became wet with sodium hypochlorite solution had no causal connection in bringing about the cataract condition of his eyes. Sullivan v. C. & S. Poultry Co., 234 Miss. 126, 105 So. 2d 558, 1958 Miss. LEXIS 473 (Miss. 1958).

Evidence, including medical testimony, sustained findings that the paralysis suffered by claimant was the result of falling while performing his duties, rather than resulting from a brain hemorrhage wholly disconnected from his work. Nicholas Co. v. Dodson, 232 Miss. 569, 99 So. 2d 666, 1958 Miss. LEXIS 304 (Miss. 1958).

Where a claimant, who had received an injury in an accident arising out of and within the scope of his employment, did not lose as much as a week's time from his work, and did not file for compensation benefits within two years of the date of injury, and there was only a mere possibility of a causal connection between the accident and claimant's condition, a denial of compensation benefits was affirmed. Welborn v. Joe N. Miles & Sons Lumber Co., 231 Miss. 827, 97 So. 2d 734, 1957 Miss. LEXIS 568 (Miss. 1957).

Evidence sustained findings by the workmen's compensation commission and lower court that the claimant's congenital spondylolisthesis condition was not the result of claimant's lifting heavy objects or performing manual labor for his employer. Thompson v. Armstrong Cork Co., 230 Miss. 730, 93 So. 2d 831, 1957 Miss. LEXIS 415 (Miss. 1957).

Evidence was sufficient to sustain the workmen's compensation commission's finding that claimant's cataracts were either caused by the absorption of radiant energy and infra-red rays, or that the cataracts were aggravated by such absorption so as to accelerate the onset of his disability due to blindness. Ingalls Shipbuilding Corp. v. Dickerson, 230 Miss. 110, 92 So. 2d 354, 1957 Miss. LEXIS 350 (Miss. 1957).

Workmen's compensation commission's finding that there was no causal connection between claimant's disability and an injury which occurred in the course of her employment was supported by substantial evidence, including medical testimony fairly demonstrating that neither the injury nor the operation was the probable cause of the disabling pain, and further showing that the probable cause thereof was a pre-existing disease. Malley v. Over The Top, Inc., 229 Miss. 347, 90 So. 2d 678, 1956 Miss. LEXIS 614 (Miss. 1956).

In a workman's compensation proceeding where a referee made an erroneous statement that in his opinion an employee whom he awarded compensation for contact dermatitis caused by her work as dishwasher, was given a new kind of soap or washing powder to use, was not ground for reversal of an award, inasmuch as whether the soap which the claimant was required to use was a new kind of soap or not was immaterial. Christopher v. City Grill, 218 Miss. 638, 67 So. 2d 694, 1953 Miss. LEXIS 582 (Miss. 1953).

30. Pre-existing disease or infirmity.

Apportionment of recovery was not appropriate, where the ultimate cause of the decedent's fatal heart attack remained unknown. Miss. Baptist Med. Ctr. v. Dependents of Mullett, 856 So. 2d 612, 2003 Miss. App. LEXIS 593 (Miss. Ct. App. 2003).

Evidence, though conflicting, was sufficient to support Workers' Compensation Commission's finding that claimant engulfed in ammonia gas at work suffered compensable injury, but Commission erred in finding that he suffered permanent and total disability, where evidence revealed that pre-existing condition, emphysema, contributed to lung ailment. Reichhold Chemical, Inc. v. Sprankle, 503 So. 2d 799, 1987 Miss. LEXIS 2363 (Miss. 1987).

A claimant who has once been adjudged totally and permanently disabled and who has received benefits therefor, but who thereafter resumes gainful employment and becomes injured while so engaged, is not precluded from receiving benefits for loss of wage earning capacity arising out of the later injury; however, a claimant may not pyramid benefits and receive in excess of the maximum weekly benefit provided by statute during any one period. Observa--Dome Laboratories, Inc. v. Ivy, 302 So. 2d 862, 1974 Miss. LEXIS 1433 (Miss. 1974).

Although claimant's prior asthmatic condition may have played a part in his ultimate disability, it is well settled that where a claimant's employment contributes to his condition, the injury is compensable. Boyd v. State, 291 So. 2d 560, 1974 Miss. LEXIS 1729 (Miss. 1974).

The burden is upon the employer to prove that there was a preexisting disease or lesion which was a contributing factor in causing the injury or death. Mississippi Research & Development Center v. Dependents of Shults, 287 So. 2d 273, 1973 Miss. LEXIS 1331 (Miss. 1973); Stuart Mfg. Co. v. Walker, 313 So. 2d 574, 1975 Miss. LEXIS 1676 (Miss. 1975).

The signing of an application for group insurance benefits, is a factor to be considered in determining whether an injury was work connected or arose out of a pre-existing condition, but it is not per se a bar to a claim under the Workmen's Compensation Law where the facts are in dispute. Central Electric & Machinery Co. v. Shelton, 220 So. 2d 320, 1969 Miss. LEXIS 1454 (Miss. 1969).

A finding by the commission that a pre-existing condition of arthritis and bursitis was a material contributing factor in a claimant's permanent partial disability of his right arm resulting as a consequence of a fall from a ladder was supported by ample evidence. Walters Bros. Builders v. Loomis, 187 So. 2d 586, 1966 Miss. LEXIS 1353 (Miss. 1966).

Where widow-claimant has asserted and proved as an integral and indispensable part of her claim that the employee's death as a consequence of a ruptured vascular aneurysm aorta was, in part, the consequence of a pre-existing condition, it was not necessary that the employer-carrier plead or prove as an affirmative defense the existence of such pre-existing condition. Armstrong Tire & Rubber Co. v. Payton, 186 So. 2d 217, 1966 Miss. LEXIS 1298 (Miss. 1966).

31. —Aggravation, acceleration, or contribution to pre-existing condition.

Award of permanent total disability benefits to the employee for 450 weeks was proper in part because no medical evidence was presented that the employee's heart problems were a material contributing factor to her permanent restrictions as to lifting, standing, or sitting. Adolphe Lafont USA, Inc. v. Ayers, 958 So. 2d 833, 2007 Miss. App. LEXIS 417 (Miss. Ct. App. 2007).

A finding by the Workers' Compensation Commission that an employee's pre-existing heart condition was aggravated by exposure to chemicals in the workplace rendering him totally and permanently disabled was not clearly erroneous where the employee was exposed to numerous amounts of volatile chemicals under poor ventilation conditions for a period of 29 years and the testimony before the Commission revealed that the chemicals would enter the lungs and bloodstream and could have had an adverse effect upon the employee's heart. Mitchell Buick, Pontiac & Equipment Co. v. Cash, 592 So. 2d 978, 1991 Miss. LEXIS 980 (Miss. 1991).

The Workers' Compensation Commission's findings that a truck driver sustained a compensable injury and that the repeated trauma of his work aggravated a pre-existing non-work-related condition were supported by substantial evidence where the worker's treating physician and the physician for the employer who conducted a physical examination required by the Department of Transportation had released the worker to return to work following treatment for a non-work-related back injury and the treating physician testified that the worker had a "chronically sore joint in the back that was apparently being aggravated by the nature of his work as a long-distance truck driver." Miller Transporters, Inc. v. Guthrie, 554 So. 2d 917, 1989 Miss. LEXIS 495 (Miss. 1989).

Where medical testimony left no room for doubt that trauma resulting when a metal door slipped from the claimant's hands and struck him on his jaw, aggravated the malignant condition of the claimant's cancerous tumor involving a salivary gland, a proper claim for workmen's compensation was established. Tiller v. Southern U. S. F., Inc., 246 So. 2d 530, 1971 Miss. LEXIS 1405 (Miss. 1971).

Where the claimant had a pre-existing condition of pyelitis and prostatitis and sustained an "on the job" aggravation and, after treatment, his condition reverted to the same as it was prior to the injury, though pre-aggravated, the employer and carrier were not responsible for any compensation or medical benefits. Miller Transporters, Ltd. v. Dean, 254 Miss. 1, 179 So. 2d 552, 1965 Miss. LEXIS 916 (Miss. 1965).

A claimant suffering from cystic emphysema who, as a consequence of inhaling plastic dust and chemical fumes in the course of his employment, suffered a spontaneous pneumothorax was entitled to receive temporary total disability payments for the period that his lung remained collapsed, for his condition had been aggravated by his employment. Presto Mfg. Co. v. Chandler, 252 Miss. 36, 172 So. 2d 431, 1965 Miss. LEXIS 1072 (Miss. 1965).

When a pre-existing disease or infirmity of workmen is aggravated by a work-connected injury, or if the second injury combines with a prior disease or infirmity and the combination produces disability, the resulting disability is compensable. Scott v. Brookhaven Well Service, 246 Miss. 456, 150 So. 2d 508, 1963 Miss. LEXIS 464 (Miss. 1963); M. T. Reed Constr. Co. v. Garrett, 249 Miss. 892, 164 So. 2d 476, 1964 Miss. LEXIS 444 (Miss. 1964).

Where the work of the employee aggravates a pre-existing disease or condition the resulting injury is compensable. I. B. S. Mfg. Co. v. Dependents of Cook, 241 Miss. 256, 130 So. 2d 557, 1961 Miss. LEXIS 341 (Miss. 1961).

Death during working hours from a cerebral hemorrhage is compensable where the activities and duties of the employment aggravated, accelerated, or combined with pre-existing disease to produce death. Mississippi Highway Patrol v. Dependents of Neal, 239 Miss. 505, 124 So. 2d 120, 125 So. 2d 544, 1960 Miss. LEXIS 315 (Miss. 1960).

When a pre-existing disease or infirmity of an employee is aggravated, lighted up or accelerated by a work-connected injury, or if the injury combines with the disease to produce disability, the resulting disability is compensable; but when the effect of the injury has subsided, subsequent disability attributable solely to the disease or infirmity is not compensable. Rathborne, Hair & Ridgeway Box Co. v. Green, 237 Miss. 588, 115 So. 2d 674, 1959 Miss. LEXIS 508 (Miss. 1959).

Work need not be sole cause of injury, which is compensable if it aggravated, accelerated or combined with a disease or infirmity to produce disability or death. Insurance Dep't of Mississippi v. Dinsmore, 233 Miss. 569, 104 So. 2d 296, 1958 Miss. LEXIS 420 (Miss. 1958); Central Electric Power Asso. v. Hicks, 236 Miss. 378, 110 So. 2d 351, 112 So. 2d 230, 1959 Miss. LEXIS 330 (Miss. 1959); Shivers v. Biloxi-Gulfport Daily Herald, 236 Miss. 303, 110 So. 2d 359, 1959 Miss. LEXIS 320 (Miss. 1959).

A pre-existing disease or infirmity of an employee does not disqualify a claim if the employment aggravated, accelerated or combined with the disease or infirmity to produce a death or disability for which compensation is sought, and it is not necessary to show that the exertion which concurred in precipitating the harm was in itself unusual or beyond the routine of the employment, provided that relation is shown. Lewis v. Trackside Gasoline Station & Pacific Indem. Co., 233 Miss. 663, 103 So. 2d 868, 1958 Miss. LEXIS 429 (Miss. 1958).

Where it was manifest from a composite reading of the medical testimony, together with the fact of the employee's recent heart attack and the employment exertions of the deceased as a log scaler, that the deceased's employment and work on the day of his death, when he had scaled three truckloads of logs, aggravated, precipitated and contributed to his death, compensation was awarded. Poole v. R. F. Learned & Son, 234 Miss. 362, 103 So. 2d 396, 1958 Miss. LEXIS 503 (Miss.), modified, Poole v. R. F. Learned & Sons, 234 Miss. 362, 105 So. 2d 162, 1958 Miss. LEXIS 504 (Miss. 1958).

Where there was medical evidence showing that mental and emotional strain of state employee's duties, which were both clerical and executive, aggravated the employee's pre-existing hypertension and that such aggravation was a factor contributing to the employee's disability, the disability was compensable. Insurance Dep't of Mississippi v. Dinsmore, 233 Miss. 569, 104 So. 2d 296, 1958 Miss. LEXIS 420 (Miss. 1958).

If the work of the deceased either aggravates a pre-existing condition or precipitates a heart attack, the claim is compensable. Pennington v. Smith, 232 Miss. 775, 100 So. 2d 569, 1958 Miss. LEXIS 328 (Miss. 1958).

Where it is shown that an employee has died from a heart attack, in order to make out a prima facie case for compensation, the claimants must show, in addition to the heart ailment, that the work aggravated, accelerated or precipitated the heart attack, and that the two conditions together caused the death of the deceased. Rushing v. Water Valley Coca Cola Bottling Co., 232 Miss. 338, 98 So. 2d 870, 1957 Miss. LEXIS 481 (Miss. 1957).

Where it was shown that claimant's condition, following an operation for a pre-existing disease, was aggravated by the strain caused by her industrial employment, and that as a result she was unable to do the work which she formerly did, claimant was entitled to recover for permanent partial disability. King v. Westinghouse Electric Corp., 229 Miss. 830, 92 So. 2d 209, 1957 Miss. LEXIS 584 (Miss. 1957).

While generally a pre-existing disease or infirmity does not disqualify a claim under the "arising out of employment" requirements of the Workmen's Compensation Law, if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the death or disability for which compensation is sought, in hernia cases effect must be given to Code 1942, § 6998-12. Fagan v. Wells-Lamont, Inc., 228 Miss. 660, 89 So. 2d 632, 1956 Miss. LEXIS 560 (Miss. 1956).

Medical testimony, as well as other enumerated circumstances, constituted substantial evidence that the trauma to the deceased employee's back, caused by an injury arising in the course of his employment, lighted up, aggravated, accelerated or combined with a pre-existing cancerous condition to produce his death. Dixie Pine Products Co. v. Dependents of Bryant, 228 Miss. 595, 89 So. 2d 589, 1956 Miss. LEXIS 551 (Miss. 1956).

Where a pre-existing disease or infirmity is aggravated, accelerated, or contributed to and precipitated by the work in which the employee is engaged, the claim is compensable under the Workmen's Compensation Law upon the theory that in such event the injury or death occurred during the course of, or arising out of, the employment. Southern Engineering & Electric Co. v. Chester, 226 Miss. 136, 83 So. 2d 811, 1955 Miss. LEXIS 617 (Miss. 1955).

As bearing on the question whether pre-existing heart disease causing death was aggravated by employee's work or emotional strain involved in painting, failure of referee to permit proof of medical or family history of the employee as it related to heart disease was not error where claimant failed to dictate for record particular facts which would enable court on appeal to determine whether such facts would have a bearing on the question at issue. Dillon v. Gasoline Plant Constr. Corp., 222 Miss. 10, 75 So. 2d 80, 1954 Miss. LEXIS 610 (Miss. 1954).

A pre-existing disease or infirmity of the employee does not disqualify a claim under the "arising out of employment" requirement if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the death or disability for which compensation is sought. East v. Pigford Bros. Constr. Co., 219 Miss. 121, 68 So. 2d 294, 70 So. 2d 880 (1953); Tate v. Dr. Pepper Bottling Co., 220 Miss. 311, 70 So. 2d 602, 1954 Miss. LEXIS 442 (Miss. 1954); Dixie Pine Products Co. v. Dependents of Bryant, 228 Miss. 595, 89 So. 2d 589, 1956 Miss. LEXIS 551 (Miss. 1956); King v. Westinghouse Elec. Corp., 229 Miss. 830, 92 So. 2d 209, 93 So. 2d 183 (1957).

In compensation case involving injury to operator of electric chisel in shipbuilding process, where partial paralysis resulted when pre-existing malformation of blood vessels in back was aggravated by pressure of back against metal bar, augmented by recoil of automatic chisel, the injury was accidental within the contemplation of the Workmen's Compensation Law. Ingalls Shipbuilding Corp. v. Byrd, 215 Miss. 234, 60 So. 2d 645, 1952 Miss. LEXIS 558 (Miss. 1952).

32. —As bar to compensation.

Evidence that a workman's death occurred several hundred miles from his place of employment and 19 months after a back injury sustained by him in the course of his employment, and testimony of an expert witness that the workman did not die as a result of a heart condition, sustained a finding of the commission that the back injury with its resulting surgery did not aggravate, accelerate, or contribute to the pre-existing heart condition which brought about the workman's death. Southern Brick & Tile Co. v. Clark, 247 So. 2d 692, 1971 Miss. LEXIS 1443 (Miss. 1971).

Plaintiff who had a pre-existing ruptured disk and suffered injury in his lower back while driving a truck for his employer and the injury resulted when he coughed or sneezed, he was not entitled to compensation, for the cough or sneeze which caused the injury was completely unrelated to his employment and the accident, therefore, did not arise out of his employment. Malone & Hyde of Tupelo, Inc. v. Hall, 183 So. 2d 626, 1966 Miss. LEXIS 1429 (Miss. 1966).

Where the evidence revealed that the claimant's pre-existing atherosclerosis was the predisposing cause of his massive cerebral hemorrhage, and that if it had been a result of his exertion on the job the stroke would have occurred almost immediately rather than some 12 hours later as it did, compensation was properly denied. Ingalls Shipbuilding Corp. v. McNeal, 251 Miss. 573, 170 So. 2d 562, 1965 Miss. LEXIS 884 (Miss. 1965).

In view of Code 1942, § 6998-12, claimant's failure to prove that there had been no descent or protrusion of her incisional hernia prior to the accident for which compensation was claimed barred recovery benefits for the aggravation of a pre-existing hernia. Fagan v. Wells-Lamont, Inc., 228 Miss. 660, 89 So. 2d 632, 1956 Miss. LEXIS 560 (Miss. 1956).

33. —Not bar to compensation.

A claimant, who, in seeking employment failed to divulge that she had suffered a back injury in 1969 resulting in disc surgery, was not estopped from receiving benefits for a 1977 back injury, in absence of evidence showing a causal relationship of the 1969 injury to the 1977 injury. Emerson Electric Co. v. McLarty, 487 So. 2d 228, 1986 Miss. LEXIS 2442 (Miss. 1986).

That a claimant, suffering from contact dermatitis, worked for his employer under three successive workmen's compensation insurers and gradually became worse over the years did not entitle the third insurer to contribution on the ground of a pre-existing condition. Thyer Mfg. Co. v. Mooney, 252 Miss. 629, 173 So. 2d 652, 1965 Miss. LEXIS 1134 (Miss. 1965).

Compensation held properly allowed for permanent partial disability resulting from the lighting up of a prior latent condition by an accidental injury. Rigdon v. General Box Co., 249 Miss. 239, 162 So. 2d 863, 1964 Miss. LEXIS 390 (Miss. 1964).

Compensation was awarded for death of a porter at a motel, where there was evidence that his condition was aggravated by his employment. El Patio Motor Court, Inc. v. Dependents of Long, 242 Miss. 294, 134 So. 2d 437, 1961 Miss. LEXIS 558 (Miss. 1961), limited, Leake County Cooperative v. Dependents of Barrett, 226 So. 2d 608, 1969 Miss. LEXIS 1306, 1969 Miss. LEXIS 1307 (Miss. 1969).

Compensation should have been awarded for the death of a member of an electric power company's maintenance crew, who had hypertensive cardiovascular disease and who, after a day's work of heavy physical labor during which he experienced pains in the cardiac region, went directly to his physician's office and within an hour died of a heart attack. Central Electric Power Asso. v. Hicks, 236 Miss. 378, 110 So. 2d 351, 112 So. 2d 230, 1959 Miss. LEXIS 330 (Miss. 1959).

Where, as a result of strain of carpenter's helper in cranking motor as an incident of his work, there was a protrusion of pre-existing hemorrhoids, this was an accidental injury for which compensation was payable notwithstanding the fact that the pre-existing infirmity of the employee combined with the strain of employment brought about the disabling condition. East v. Pigford Bros. Constr. Co., 219 Miss. 121, 68 So. 2d 294, 70 So. 2d 880 (1953).

Where a claimant had a pre-existing and apparently cogenital pilonidal cyst in the lower part of backbone, and this was brought to light and aggravated by constant riding which the claimant was required to do in carrying out his duties as a route salesman, the injury was compensable. Tate v. Dr. Pepper Bottling Co., 220 Miss. 311, 70 So. 2d 602, 1954 Miss. LEXIS 442 (Miss. 1954).

34. —Apportionment.

Because the administrative judge and Mississippi Workers' Compensation Commission failed to address the issue of apportionment or set off credit, the appellate court remanded the case for further proceedings. Wash. Cty. Bd. of Supervisors v. Smith, — So. 3d —, 2020 Miss. App. LEXIS 537 (Miss. Ct. App. Sept. 15, 2020).

Apportionment of recovery was not appropriate, where the ultimate cause of the decedent's fatal heart attack remained unknown. Miss. Baptist Med. Ctr. v. Dependents of Mullett, 856 So. 2d 612, 2003 Miss. App. LEXIS 593 (Miss. Ct. App. 2003).

In a case involving an employer's bad faith failure to pay worker's compensation benefits, it was harmless error to allow an employee to cross-examine a witness about the apportionment statute, Miss. Code Ann. § 71-3-7(b), where the witness did not have the authority to determine when a claimant had reached maximum medical recovery. Miss. Power & Light Co. v. Cook, 832 So. 2d 474, 2002 Miss. LEXIS 399 (Miss. 2002).

Mental injury of worker unaccompanied by physical trauma is not directly linked to untoward event, unusual occurrence, accident or injury incident to employment, as required for worker to be entitled to worker's compensation benefits, where worker claims that mental injury results from termination of worker due to business conditions eliminating need for worker's employment; if worker were entitled to benefits at all, it would only be to apportioned benefits if worker has long history of mental and emotional disorders prior to termination. Smith & Sanders, Inc. v. Peery, 473 So. 2d 423, 1985 Miss. LEXIS 2159 (Miss. 1985).

The minimum payment of $25 per week provided in § 71-3-13 may not be reduced by the apportionment provided in § 71-3-7 except in partial dependency cases. Thus, a partially disabled employee was entitled to weekly payments of $25 rather than $12.50, even though her permanent partial disability was due 50 percent to her work-related injury and 50 percent to a preexisting condition. Cross Mfg., Inc. v. Lowery, 394 So. 2d 887, 1981 Miss. LEXIS 1940 (Miss. 1981).

The issue of whether this section was applicable to a claimant who injured his back in the course of his employment as an insurance adjuster, but who had also suffered from serious lower back problems in the past, could not be resolved where there had not yet been a determination as to the date of claimant's maximum medical recovery. Azwell v. Franklin Associates, 374 So. 2d 766 (Miss. 1979).

Where there is some evidence to support it, apportionment is mandatory, regardless of whether or not it was pled. Boyd v. State, 291 So. 2d 560, 1974 Miss. LEXIS 1729 (Miss. 1974).

It is not necessary that a pre-existing infirmity produce industrial disability prior to an aggravating or supplemental injury, or that it be such as normally would result in disability in time because of the normal progress of the disease, nor is it necessary that the prior infirmity itself have been directly aggravated; the test of the applicability of the apportionment statute is whether the prior infirmity contributed to the employee's disability. International Paper Co. v. Tiffee, 246 So. 2d 535, 1971 Miss. LEXIS 1411 (Miss. 1971).

Normal degenerative actions accompanying age cannot be classed as "disease" within the meaning of the apportionment provisions of the Workmen's Compensation Law. Weaver Pants Co. v. Duncan, 231 So. 2d 489, 1970 Miss. LEXIS 1590 (Miss. 1970).

In an action on a claim for workmen's compensation benefits, evidence that the claimant, while at work, slipped and sustained pain to his back, which necessitated his taking some days from work, and that upon his return, he again hurt his back picking up a heavy object, sustained the commission's findings that a bulge or herniated disc and a resultant disability arose out of and in the course of the claimant's employment, notwithstanding other evidence that the claimant prior to these injuries was found to have a degree of degenerative arthritis of some duration, and medical testimony suggesting that at least part of the disability was attributable to the pre-existing degenerative condition. Central Electric & Machinery Co. v. Shelton, 220 So. 2d 320, 1969 Miss. LEXIS 1454 (Miss. 1969).

The 1968 amendment incorporated in this section [Code 1942, § 6998-04] the limitations on apportionment established in Cockrell Banana Co. v. Harris (Miss. 1968) 212 So. 2d 581. Delta Millwork, Inc. v. Terry, 216 So. 2d 542, 1968 Miss. LEXIS 1244 (Miss. 1968).

Apportionment of death benefits should begin from the date of the employee's death, applicable to both weekly and maximum compensation. Mississippi Stationery Co. v. Segal, 214 So. 2d 820, 1968 Miss. LEXIS 1335 (Miss. 1968).

Apportionment of a disability claim should be applied to weekly and maximum benefits when the claimant has reached maximum medical recovery. Mississippi Stationery Co. v. Segal, 214 So. 2d 820, 1968 Miss. LEXIS 1335 (Miss. 1968).

To give the apportionment statute the meaning intended by the legislature, maximum benefits, as well as weekly, are to be subjected to apportionment. Cockrell Banana Co. v. Harris, 212 So. 2d 581, 1968 Miss. LEXIS 1290 (Miss. 1968).

Apportionment of disability payments should start as of the time the claimant has reached maximum medical recovery. Cockrell Banana Co. v. Harris, 212 So. 2d 581, 1968 Miss. LEXIS 1290 (Miss. 1968).

The date of maximum recovery and the determination of apportionment are questions to be decided by the attorney-referee, subject to review by the full commission; and these are not matters to be determined by the employer or carrier. Cockrell Banana Co. v. Harris, 212 So. 2d 581, 1968 Miss. LEXIS 1290 (Miss. 1968).

After the date the employee reaches maximum medical recovery, weekly compensation benefits in the language of the statute shall be reduced by that proportion which the pre-existing physical handicap, disease, or lesion contributes to the results following injury. Cockrell Banana Co. v. Harris, 212 So. 2d 581, 1968 Miss. LEXIS 1290 (Miss. 1968).

Apportionment of the maximum death benefit is implicit in apportionment of weekly benefits. B. & D. Theatres, Inc. v. Davis, 190 So. 2d 845, 1966 Miss. LEXIS 1400 (Miss. 1966), overruled, Cockrell Banana Co. v. Harris, 212 So. 2d 581, 1968 Miss. LEXIS 1290 (Miss. 1968).

The percentage of contribution of a prior condition to an injury is not ordinarily susceptible of exact proof, and the estimate of the commission that a motion picture projectionist, who suffered a coronary occlusion on the job and died of the resulting myocardial infarction, had a pre-existing atherosclerosis constituting a 25 percent contribution to the condition which caused his death will not be overturned on appeal in the absence of evidence reflecting that the commission abused its discretion. B. & D. Theatres, Inc. v. Davis, 190 So. 2d 845, 1966 Miss. LEXIS 1400 (Miss. 1966), overruled, Cockrell Banana Co. v. Harris, 212 So. 2d 581, 1968 Miss. LEXIS 1290 (Miss. 1968).

When the effect of a claimant's work-connected injury has subsided, and the injury no longer combines with a pre-existing disease or infirmity to produce disability, any subsequent disability attributable solely to the pre-existing disease or infirmity is not compensable. Lee v. Lumberton Mfg. Co., 198 So. 2d 823, 1967 Miss. LEXIS 1279 (Miss. 1967); M. T. Reed Constr. Co. v. Garrett, 249 Miss. 892, 164 So. 2d 476, 1964 Miss. LEXIS 444 (Miss. 1964).

Generally it is necessary for the employer to plead and prove the existence of a pre-existing disease or infirmity in order to be able to claim the benefits of an apportionment. Mississippi Tank Co. v. Dependents of Walker, 187 So. 2d 590, 1966 Miss. LEXIS 1354 (Miss. 1966).

The burden of proof is upon the employer to prove by a preponderance of the evidence all of the factors required by the apportionment statute, and these factors are the existence of a pre-existing handicap, disease or lesion, which is a material contributing factor to the results following injury, and these factors must be shown by medical findings. Bill Williams Feed Service v. Mangum, 183 So. 2d 917, 1966 Miss. LEXIS 1453 (Miss. 1966).

The basic purpose of the apportionment provision is to encourage employers to employ handicapped persons with pre-existing disease or lesion, whom a prospective employer would be reluctant to employ in the absence of the apportionment provision. Thyer Mfg. Co. v. Mooney, 252 Miss. 629, 173 So. 2d 652, 1965 Miss. LEXIS 1134 (Miss. 1965).

The reduction in compensation benefits due to the results following injury by a pre-existing handicap, disease or lesion, refers to benefits which the insured employee will not receive at all, not to benefits which will be paid by someone else. Thyer Mfg. Co. v. Mooney, 252 Miss. 629, 173 So. 2d 652, 1965 Miss. LEXIS 1134 (Miss. 1965).

Compensation is required to be reduced by the proportion which a pre-existing physical handicap, disease or lesion contributes to the production of the results following the injury. Dillingham Mfg. Co. v. Upton, 252 Miss. 281, 172 So. 2d 766, 1965 Miss. LEXIS 1100 (Miss. 1965), overruled, Cockrell Banana Co. v. Harris, 212 So. 2d 581, 1968 Miss. LEXIS 1290 (Miss. 1968), but see Cockrell Banana Co. v. Harris, 212 So. 2d 581, 1968 Miss. LEXIS 1290 (Miss. 1968).

Apportionment on account of a pre-existing injury cannot be made where without basis in pleading and proof. Mississippi Federated Cooperatives v. Roberts, 248 Miss. 732, 160 So. 2d 922, 1964 Miss. LEXIS 298 (Miss. 1964).

Before an award may be reduced by reason of a pre-existing physical condition, it must be shown by medical findings not only that there was a pre-existing handicap, disease or lesion but also that such condition contributed to the results following the injury. L. B. Priester & Son, Inc. v. Dependents of Bynum, 247 Miss. 664, 157 So. 2d 399, 1963 Miss. LEXIS 340 (Miss. 1963).

Employer has burden of showing that disability is in part due to pre-existing physical condition. I. Taitel & Son v. Twiner, 247 Miss. 785, 157 So. 2d 44, 1963 Miss. LEXIS 356 (Miss. 1963).

The commission's conclusion as to the degree to which pre-existing disease contributed to the injury will not be set aside by the courts unless not supported by substantial evidence or manifestly wrong. Southeastern Constr. Co. v. Dependent of Dodson, 247 Miss. 1, 153 So. 2d 276, 1963 Miss. LEXIS 277 (Miss. 1963).

The extent to which a demonstrated physical condition contributed to an employee's death is in the sound discretion of the workmen's compensation commission. Southeastern Constr. Co. v. Dependent of Dodson, 247 Miss. 1, 153 So. 2d 276, 1963 Miss. LEXIS 277 (Miss. 1963).

The provision for a proportionate reduction of compensation for disability to which a pre-existing condition has contributed should be construed in a fair manner, equitably and justly. Cuevas v. Sutter Well Works, 245 Miss. 478, 150 So. 2d 524, 1963 Miss. LEXIS 529 (Miss. 1963).

A reduction of compensation under this section [Code 1942, § 6998-04] must be supported by substantial evidence. Cuevas v. Sutter Well Works, 245 Miss. 478, 150 So. 2d 524, 1963 Miss. LEXIS 529 (Miss. 1963).

Under this provision the burden is on the employer and his insurer to establish by a preponderance of evidence a pre-existing condition shown by medical findings to be a material contributing factor in the results following injury, and the proportion of such contribution. Cuevas v. Sutter Well Works, 245 Miss. 478, 150 So. 2d 524, 1963 Miss. LEXIS 529 (Miss. 1963).

35. — —Required.

Mississippi Workers' Compensation Commission did not err when it apportioned an employee's right extremity award, under Miss. Code Ann. § 71-3-7, because the employee's prior injuries prevented her from working in her previous capacity, the employee did not have a latent prior condition, the employee had prior injuries for which she was compensated, and the Commission could have found that those prior injuries were a material contributing factor to her subsequent injuries. Johnson Elec. Auto., Inc. v. Colebrook, 995 So. 2d 791, 2008 Miss. App. LEXIS 287 (Miss. Ct. App.), cert. denied, 999 So. 2d 374, 2008 Miss. LEXIS 664 (Miss. 2008).

The Workers' Compensation Commission properly apportioned an employee's disabilities between 2 injuries where there was no evidence of a causal connection between the 2 injuries. Cawthon v. Alcan Aluminum Corp., 599 So. 2d 925, 1991 Miss. LEXIS 713 (Miss. 1991).

Apportionment of an award of compensation based on the claimant's pre-existing heart condition was proper, even though his pre-existing heart condition caused no pre-injury occupational disability, since the heart attack which left the plaintiff permanently and totally disabled was materially contributed to by his pre-existing obstructive pulmonary disease and his hypertension. Mitchell Buick, Pontiac & Equipment Co. v. Cash, 592 So. 2d 978, 1991 Miss. LEXIS 980 (Miss. 1991).

The Workers' Compensation Commission's apportionment of an award of death benefits by ⅔ on the basis of pre-existing health conditions was supported by substantial evidence where the worker, who died of a heart attack arising out of and in the course of his employment, had smoked 3 packs of cigarettes daily since his teenage years and consumed approximately "½ bottle of alcohol" daily for an unspecified number of years, and his family had a history of heart-related problems. Hardin's Bakeries v. Harrell, 566 So. 2d 1261, 1990 Miss. LEXIS 540 (Miss. 1990).

In work-connected injury cases where the evidence establishes (a) successive injuries experienced by the employee where following the first injury the employee engages in full-time employment for a substantial period of time prior to the second injury; or (b) a preexisting (symptomatic or asymptomatic) condition which causes the employee to experience no pre-injury occupational disability, apportionment may not be ordered. On the other hand, in cases where (a) there is evidence of a medically cognizable, identifiable, symptomatic condition which antedated the injury; and (b) the employee experienced some absence of normal (for him or her) wage earning capacity, then apportionment must be ordered. Stuart's, Inc. v. Brown, 543 So. 2d 649, 1989 Miss. LEXIS 220 (Miss. 1989).

Apportionment was proper where claimant's pre-existing infirmity of spondylolisthesis was supported by medical findings. General Electric Co. v. McKinnon, 507 So. 2d 363, 1987 Miss. LEXIS 2504 (Miss. 1987).

Apportionment was required where deceased worker's pre-existing epileptic condition was a factor contributing to his death. Chapman, Dependents of v. Hanson Scale Co., 495 So. 2d 1357, 1986 Miss. LEXIS 2710 (Miss. 1986).

Apportionment should have been ordered under record containing medical evidence that deceased employee had a preexisting heart condition and overwhelming evidence that this preexisting condition was a factor contributing to the employee's death. Road Maintenance Supply, Inc. v. Dependents of Maxwell, 493 So. 2d 318, 1986 Miss. LEXIS 2537 (Miss. 1986).

Apportionment was required where, prior to the work related injury, claimant had experienced 4 hernias which contributed to his permanent, total disability. Delta Drilling Co. v. Cannette, 489 So. 2d 1378, 1986 Miss. LEXIS 2472 (Miss. 1986).

Where it was undisputed that deceased had a history of hypertensive vascular disease dating from about 1962, apportionment of benefits should be ordered. Alexander v. Campbell Constr. Co., 288 So. 2d 4, 1974 Miss. LEXIS 1834 (Miss. 1974).

Where employee died of a job-related heart attack, but a post-mortem examination revealed signs of coronary atherosclerosis which played a part in his death, a reduction of the award by apportionment was required. Mississippi Research & Development Center v. Dependents of Shults, 287 So. 2d 273, 1973 Miss. LEXIS 1331 (Miss. 1973).

Where a claimant had no functional disability before he sustained a transient myocardial ischemia while carrying a water pump and hose weighing about 300 pounds with another worker in the course of his employment, but was permanently disabled, as a result of that injury, from performing the type of work in which he had engaged before the injury, the testimony of the examining physician that the claimant had some degree of pre-existing arteriosclerosis was insufficient to substantiate the commission's finding that the claimant's disability was entirely due to his pre-existing arteriosclerosis, and the claimant was entitled to permanent disability benefits apportioned in accordance with the degree to which his pre-existing infirmity contributed to his disability. Youngblood v. Ralph M. Parsons Co., 260 So. 2d 188, 1972 Miss. LEXIS 1552 (Miss. 1972).

Where a claimant, who suffered a head injury in the course of his employment, which resulted in disabling epileptic seizures, had previously suffered from other conditions including a chronic urinary tract infection and a chronic peptic ulcer, apportionment was required, aside from any aggravation of the convulsions by the infection, where the prior conditions actively contributed to the claimant's disability before the injury, causing many absences from work, and continued to operate as a source of disability after the accident. International Paper Co. v. Tiffee, 246 So. 2d 535, 1971 Miss. LEXIS 1411 (Miss. 1971).

Where the claimants' decedent had suffered a major heart attack six months before his final and fatal heart attack which was found to have been precipitated by his job activities, there was sufficient evidence in the record to support a finding that a pre-existing condition contributed to the death, and to require apportionment if benefits were awarded, even though the defendants, who pleaded a pre-existing disease and requested apportionment, offered no proof on this issue. Futorian Mfg. Co. v. Dependents of Easley, 244 So. 2d 413, 1971 Miss. LEXIS 1335 (Miss. 1971).

Where a claimant's physician testified on cross-examination that the lifting of a ten-pound sack of potatoes was insufficient to cause a herniated thoracic disc unless there was a pre-existing disease which had weakened the spine, and where an x-ray report of the claimant's spine indicated that there was a degenerative disease of the lower spine, the cause was to be remanded to the commission for a determination as to the duration of temporary disability and the remaining permanent disability with compensation properly apportioned. Better Living Markets, Inc. v. Smith, 241 So. 2d 152, 1970 Miss. LEXIS 1325 (Miss. 1970).

Where claimant's first injury contributed to or was responsible for two-thirds of the end result of her second injury, employer's compensation carrier at time of occurrence of second injury was liable for only one third of weekly benefit award after apportionment. Arender v. National Sales, Inc., 193 So. 2d 579, 1966 Miss. LEXIS 1289, 1967 Miss. LEXIS 1552 (Miss. 1966).

Where, following a traverse fracture of the upper one third of the right femur received in the course of his employment, claimant's leg was amputated, and the evidence established that the amputation was necessitated in part by claimant's pre-existing osteomyelitis, apportionment of his compensation award was proper. Communications Equipment Co. v. Burke, 186 So. 2d 765, 1966 Miss. LEXIS 1330 (Miss. 1966).

Where there is competent evidence properly before the commission in the form of medical findings of a pre-existing physical handicap, disease or lesion, and proof is undisputed that this was a material contributing factor in the results, it is mandatory under this section [Code 1942, § 6998-04] that the compensation be reduced. Armstrong Tire & Rubber Co. v. Payton, 186 So. 2d 217, 1966 Miss. LEXIS 1298 (Miss. 1966).

Evidence held sufficient to warrant commission in apportioning 25% of death benefit to a pre-existing heart disease, though medical witnesses could not fix exact amount attributable to disease. Southeastern Constr. Co. v. Dependent of Dodson, 247 Miss. 1, 153 So. 2d 276, 1963 Miss. LEXIS 277 (Miss. 1963).

Reduction of amount awardable to widow for death of husband largely attributable to a pre-existing condition, sustained. Federal Compress & Warehouse Co. v. Dependent of Clark, 246 Miss. 868, 152 So. 2d 921, 1963 Miss. LEXIS 515 (Miss. 1963).

36. — — Not required.

ALJ did not err in finding that apportionment was not applicable because there was no showing of previous permanent impairment to claimant's left shoulder, and the benefits awarded were not based on any other previous impairments she may have had to other parts of her body. Eichhorn v. Kroger Co., — So. 3d —, 2021 Miss. App. LEXIS 166 (Miss. Ct. App. Apr. 13, 2021).

Mississippi Workers' Compensation Commission's decision not to apportion disability benefits as a result of a claimant's preexisting conditions was based on substantial evidence. There was nothing in the record to show that the claimant's diabetes hindered the claimant from performing the claimant's job duties as a deputy sheriff, and there was very little evidence describing the claimant's heart condition, and no mention of how, if at all, it affected the claimant's ability to perform the claimant's job duties. Leflore County Bd. of Supervisors v. Golden, 169

So. 3d 882, 2014 Miss. App. LEXIS 86 (Miss. Ct. App. 2014).

No proof existed showing that the employee's pre-existing high blood pressure or his enlarged heart caused him any loss of wage earning capacity prior to the date of a syncope episode, and until that time he was able to perform the functions of his employment without limitation; under these circumstances, apportionment of the employee's benefits was inappropriate. Hinds County Bd. of Supervisors v. Johnson, 977 So. 2d 1193, 2007 Miss. App. LEXIS 578 (Miss. Ct. App. 2007), cert. denied, 977 So. 2d 1144, 2008 Miss. LEXIS 133 (Miss. 2008).

While two physicians did state that claimant's knee injuries sustained at work were exacerbated and perpetuated by claimant's morbid obesity, and while only preexisting occupational disabilities generated a duty to apportion, in claimant's case, neither party raised the issue of apportionment, nor was there any evidence presented to prove that claimant had a preexisting disability that caused claimant to be occupationally disabled prior to claimant's injury at work; thus, the commission's ruling that claimant had failed to prove that claimant was entitled to permanent disability benefits beyond the 3 percent impairment ratings assigned to each knee was not clearly erroneous or contrary to the overwhelming weight of the evidence. McMillian v. Delphi Packard Elec. Sys., 921 So. 2d 345, 2004 Miss. App. LEXIS 211 (Miss. Ct. App. 2004), cert. denied, 926 So. 2d 922, 2006 Miss. LEXIS 162 (Miss. 2006).

Substantial evidence supported an award of permanent partial disability benefits to a claimant resulting from the industrial loss of use of the claimant's upper extremities due to a work-related injury while employed by the employer; the claimant suffered no prior occupational disability that would have required apportionment of the award. Peco Foods of Miss., Inc. v. Keyes, 820 So. 2d 775, 2002 Miss. App. LEXIS 373 (Miss. Ct. App. 2002).

Apportionment was not required in a heart injury case involving a firefighter who worked for a city for over 20 years, but who became unable to work or procure any employment that would not put his life in danger; although the claimant may have been at risk because of family history for pre-existing medical infirmities, those difficulties were not occupational disabilities, and the stress of his job ignited what had been a dormant condition. City of Laurel v. Blackledge, 1999 Miss. App. LEXIS 333 (Miss. Ct. App. June 22, 1999), sub. op., 755 So. 2d 573, 2000 Miss. App. LEXIS 88 (Miss. Ct. App. 2000).

Apportionment is not proper based on evidence that factors other than those related to the job activity immediately in question contributed to the disabling condition where there is no showing of previous occupational disability. Delta CMI v. Speck, 586 So. 2d 768, 1991 Miss. LEXIS 584 (Miss. 1991).

There is no basis upon which to award apportionment where cause of employee's death remained unknown, despite testimony regarding possibility employee had suffered attack of acute malignant arrhythmia. U.S. Rubber Reclaiming Co. v. Dependents of Stampley, 508 So. 2d 673, 1987 Miss. LEXIS 2599 (Miss. 1987).

Apportionment was not required upon a showing that up to the time of injury, employee, who had a pre-existing spondylosis, was gainfully employed, and was experiencing no occupational disability as a result of his pre-existing condition. Marshall Durbin, Inc. v. Hall, 490 So. 2d 877, 1986 Miss. LEXIS 2493 (Miss. 1986).

Compensation is not apportionable until the date of maximum medical recovery, regardless of whether an injury is permanent and total or of lower quality and character; thus, a 10% penalty was correctly applied to the unapportioned amounts payable prior to the date of maximum medical recovery. M. D. Hayles Lumber, Inc. v. Hamilton, 366 So. 2d 1075, 1978 Miss. LEXIS 2440 (Miss. 1978).

Where the nature of the alleged preexisting disease was more closely akin to the normal degenerative conditions of the body which accompany age rather than a material contributing factor to the claimant's condition following injury, the employer was not entitled to apportionment. Huffman v. State, 324 So. 2d 759, 1976 Miss. LEXIS 1973 (Miss. 1976).

The record of a prior adjudication of total and permanent disability of a claimant by the workmen's compensation commission is not sufficient evidence, standing alone, upon which benefits for a subsequent injury may be apportioned and reduced; it was incumbent upon the employer-carrier to not only prove by a preponderance of the evidence that the claimant continued to have his preexisting physical handicap or disease, but additionally, the burden was upon them to prove by medical findings that such preexisting physical handicap or disease was a material contributing factor to his disability following the subsequent injury. Observa--Dome Laboratories, Inc. v. Ivy, 302 So. 2d 862, 1974 Miss. LEXIS 1433 (Miss. 1974).

Where the fifth lumbar disc was normal and sound, having only the amount of degeneration usual to one of the employee's age, the commission properly found that the employee had no pre-existing condition requiring apportionment. Weaver Pants Co. v. Duncan, 231 So. 2d 489, 1970 Miss. LEXIS 1590 (Miss. 1970).

Where the principal physical characteristic of the claimant prior to suffering a back injury on the job was obesity, apportionment of his claim was improperly allowed. Empire Home Builders v. Guthrie, 187 So. 2d 17, 1966 Miss. LEXIS 1336 (Miss. 1966).

In the absence of substantial evidence on the part of the employer and insurer that the claimant's pre-existing pulmonary emphysema was a contributing factor to his disability resulting from asthmatic attacks occasioned by exposure in the course of his employment to certain quick-drying enamel used in painting automobiles, it was proper that no apportionment of benefits was made. Crump v. Fields, 251 Miss. 864, 171 So. 2d 857, 1965 Miss. LEXIS 912 (Miss. 1965).

Evidence held insufficient to support a proportionate reduction of compensation. Cuevas v. Sutter Well Works, 245 Miss. 478, 150 So. 2d 524, 1963 Miss. LEXIS 529 (Miss. 1963).

37. Deviation from employment or duties.

Worker made a voluntary decision to leave his area of employment and climb 25 feet up a tree, where he was not present and ready to further his employer's business, and falling out of a tree was not a risk incident to his employment as a pipefitter; the worker's tree climbing was a complete and serious deviation from his employment and therefore not within the scope and course of his employment, and thus his injury sustained after falling out of the tree was not compensable. Haney v. Fabricated Pipe, Inc., 203 So. 3d 725, 2016 Miss. App. LEXIS 722 (Miss. Ct. App. 2016).

While in the course of his return from an employer-compensated trip to a motel national convention, a motel manager took a side trip for the two-fold purpose of visiting a grandchild and checking a business sign erected on a site upon which the manager's employer proposed to build a motel, the death of the manager in an automobile accident during the course of the side trip was compensable. E & M Motel Management, Inc. v. Knight, 231 So. 2d 179, 1970 Miss. LEXIS 1575 (Miss. 1970).

The fact that the employer paid all travel expenses for a business trip, while not necessarily controlling, is of some significance in determining whether the death of an employee while on such trip is compensable. E & M Motel Management, Inc. v. Knight, 231 So. 2d 179, 1970 Miss. LEXIS 1575 (Miss. 1970).

A salesman who was furnished an automobile by his employer as an integral part of his contract of employment, was authorized to keep it at his residence, and was directed to have it serviced once a week at a particular filling station, left the car to be serviced and then deviating temporarily from the course of his employment joined fellow employees at a bar where they drank whisky, but subsequently returned to the filling station and picked up the car and while driving the most direct route to his home was involved in an unexplained automobile accident from which he subsequently died, was injured within the scope and course of his employment. Murphy v. Jac-See Packing Co., 208 So. 2d 773, 1968 Miss. LEXIS 1428 (Miss. 1968).

A claimant who, while on duty as a pumper in an oil field, departed from his place of employment and drove his automobile several miles away to pick up two quail hunters, one of whom happened to be his immediate superior not on duty at the time, and was severely injured in an accident while returning to his place of employment, was not injured within the scope of his employment. Bivens v. Marshall R. Young Drilling Co., 251 Miss. 261, 169 So. 2d 446, 1964 Miss. LEXIS 347 (Miss. 1964).

Fatal accident to an employee while driving employer's vehicle on returning from a midweek trip to his home did not arise out of the employment where the trip was for the employee's personal pleasure and not under any agreement with the employer, whose policy was against such use of the employer's vehicles. Phillips Contracting Co. v. Dependents of Adair, 245 Miss. 365, 148 So. 2d 189, 1963 Miss. LEXIS 523 (Miss. 1963).

Injuries sustained by a district manager for an insurance company did not arise out of or in the course of his employment where sustained while the manager was on a trip to obtain his own car and to return it to the place where he was stationed, and the fact that the manager looked over some insurance policies, collected a premium, and discussed a permanent plan of insurance with a customer did not change the result. National Bankers Life Ins. Co. v. Jones, 244 Miss. 581, 145 So. 2d 173, 1962 Miss. LEXIS 480 (Miss. 1962).

Injury to a chemist from an explosion of material while being tested by him for a third person on his employer's premises does not arise out of and in the course of his employment. Connell v. Armstrong Tire & Rubber Co., 242 Miss. 280, 134 So. 2d 435, 1961 Miss. LEXIS 556 (Miss. 1961).

Where an insurance salesman, after walking a short distance in the direction of a potential customer, returned to his car to obtain a gun to shoot crows, an injury sustained by the salesman when the gun accidentally discharged occurred at a time when the salesman was on a personal mission of his own. Earnest v. Interstate Life & Acci. Ins. Co., 238 Miss. 648, 119 So. 2d 782, 1960 Miss. LEXIS 450 (Miss. 1960).

When an employer's motor vehicle is being driven by an employee, it is presumed to be on the employer's business, and the burden is on the employer to prove that it was being driven on a route which the employee's duties did not require him to take. Wilson Furniture Co. v. Wilson, 237 Miss. 512, 115 So. 2d 141, 1959 Miss. LEXIS 498 (Miss. 1959).

Under uncontradicted proof that an automobile salesman had left his home in the evening on what was initially a business mission, and had temporarily deviated therefrom later in the evening while engaging in social activities, but he had resumed his business while on his way home at the time he was killed in an automobile accident, the salesman's death arose out of and in the course of his employment, and was compensable. Thrash v. Jackson Auto Sales, Inc., 232 Miss. 845, 100 So. 2d 574, 1958 Miss. LEXIS 338 (Miss. 1958).

If a servant while engaged about his master's business deviates therefrom to engage in some personal errands or mission, the master's responsibility may be temporarily suspended, but it is re-established when the servant resumes his duties. Thrash v. Jackson Auto Sales, Inc., 232 Miss. 845, 100 So. 2d 574, 1958 Miss. LEXIS 338 (Miss. 1958).

Where an employee has been permitted to stay at home, a benefit personal to him, yet while there he also performs a service for his employer, the existence of the two purposes does not defeat claims for workmen's compensation. Allen's Dairy Prods. Co. v. Whittington's Dependents, 230 Miss. 285, 92 So. 2d 842, 1957 Miss. LEXIS 370 (Miss. 1957).

Although the employee had earlier deviated from his employment, where, at the time of receiving fatal injury in a highway accident, he was on his way home where he was required to make out certain reports for his employer, his death arose out of and in the course of his employment. Allen's Dairy Prods. Co. v. Whittington's Dependents, 230 Miss. 285, 92 So. 2d 842, 1957 Miss. LEXIS 370 (Miss. 1957).

Death of an employee, who, while engaged in transporting a pump across a river for his employer, dived out of the boat in order to cool off and was drowned, did not arise out of and in the course of his employment. Collier v. Texas Constr. Co., 228 Miss. 824, 89 So. 2d 855, 1956 Miss. LEXIS 570 (Miss. 1956).

Where an employee went on a personal trip out of town in his own automobile and during the return trip was killed, the injury and death was not a result of an accident arising out of and in the course of employment, even though on the return trip the employee carried records of employer. Dependents of Durr v. Schlumberger Oil Well Surveying Corp., 227 Miss. 606, 86 So. 2d 507, 1956 Miss. LEXIS 732 (Miss. 1956).

Where an assistant foreman, who had a regular working day of 8 hours but was subject to call during the whole 24 hours, lived near the employer's office and on the day of the accident put in 8 hours at work and later at home was washing grease from his hands with casing head gas which was set off by a lighted heater, burning the employee so seriously that he died, the injury did not arise out of and in the course of employment. Ferguson v. Suhio Petroleum Co., 225 Miss. 24, 82 So. 2d 575, 1955 Miss. LEXIS 554 (Miss. 1955).

Where an employee, who had torn the bottom of his trousers while unloading soft drinks, was sent home to change his trousers, and was struck by an automobile while riding a borrowed bicycle, the claimant was not injured in the course of his employment and was not entitled to compensation. Dr. Pepper Bottling Co. v. Chandler, 224 Miss. 256, 79 So. 2d 825, 1955 Miss. LEXIS 488 (Miss. 1955).

Where an employee was searching for employer's cows with two other employees who were not then on pay, halted his search so a fellow employee could shoot a squirrel, and as a result the employee suffered an eye injury when a pellet ricocheted, there was no causal connection between the injury and the employment, and no compensation would be awarded even though the employer allowed squirrel shooting on the job. Persons v. Stokes, 222 Miss. 479, 76 So. 2d 517, 1954 Miss. LEXIS 668 (Miss. 1954).

38. Injury from assault or other intentional acts.

Although Miss. Code Ann. § 71-3-7(4) provides that workers' compensation benefits may be denied to an injured employee if there is evidence that the employee willfully intended to injure himself, the Supreme Court concluded that there was no credible evidence to suggest that a city employee willfully acted with the intent to injure himself and that the city failed to meet its burden of proving otherwise. City of Jackson v. Brown, 235 So. 3d 190, 2017 Miss. App. LEXIS 382 (Miss. Ct. App. 2017), cert. denied, 2018 Miss. LEXIS 40 (Miss. Jan. 25, 2018).

There was substantial evidence to support the Workers' Compensation Commission's conclusion that the worker's actions did not constitute a willful intent to cause injury to himself, given that the company cited no authority that would have equated the worker's actions to willful intent, and there was no evidence establishing that his lack of sleep or consumption of pain medication would have caused the accident or shown a willful intent to injure himself. Linde Gas v. Edmonds, 167 So. 3d 1258, 2014 Miss. App. LEXIS 547 (Miss. Ct. App. 2014).

Substantial evidence supported a decision that the claimant acted in such a way as to intentionally injure himself, thus disqualifying himself from benefits, as it showed that the claimant had one hand on the primary electrical line and one on the neutral line at the time of the incident, and given the large distance between the lines, a finding that he intentionally placed his hands on the lines being fully aware of the consequences was warranted. Smith v. Tippah Elec. Power Ass'n, 138 So. 3d 934, 2013 Miss. App. LEXIS 298 (Miss. Ct. App. 2013).

Finding that the employee's injury did not arise out of his employment was proper where an injury from a third party assault that occurred due to a purely personal vendetta or disagreement did not arise out of the employment pursuant to Miss. Code Ann. § 71-3-7 and Miss. Code Ann. § 71-3-3(b). In the case, the assault arose solely from the employee's personal disagreement with a co-employee concerning a $10 loan. Sanderson Farms, Inc. v. Jackson, 911 So. 2d 985, 2005 Miss. App. LEXIS 700 (Miss. Ct. App. 2005).

Employee who was assaulted in her apartment parking lot by her co-worker and roommate was not entitled to compensation injuries arising out of and in the course of her employment. Hawkins v. Treasure Bay Hotel & Casino, 813 So. 2d 757, 2001 Miss. App. LEXIS 462 (Miss. Ct. App. 2001).

Where the claimant was kidnapped by an unknown assailant when she arrived at work and parked in a parking lot without security guards, her injury was work-related and, therefore, compensable because the employer maintained a revocable license to use the parking lot where the abduction occurred. Adams v. Lemuria, Inc., 738 So. 2d 295, 1999 Miss. App. LEXIS 100 (Miss. Ct. App. 1999).

Injuries sustained by the claimant were work-related where she was assaulted and robbed by an unknown assailant while following her employer's instructions to (1) arrive at work late at night and (2) to park in a secluded parking lot without security guards nearby to protect her as she got out of her vehicle. Green v. Glen Oaks Nursing Ctr., 722 So. 2d 147, 1998 Miss. App. LEXIS 505 (Miss. Ct. App. 1998).

The dependent of a deceased employee of a service station was properly granted workmen's compensation benefits where the deceased employee had been shot and killed by the husband of the deceased employee's supervisor, who was also a supervisor at the service station, and where the evidence supported the conclusion that the deceased employee had thought that he was involved in a work-related activity when he was called over to the husband's automobile, despite the fact that the confrontation arose because of the employee's relationship with the wife. Kerr-McGee Corp. v. Hutto, 401 So. 2d 1277, 1981 Miss. LEXIS 2069 (Miss. 1981).

The only exceptions provided by this section [Code 1942, § 6998-04] to an employer's liability for payment of compensation is where the intoxication of the employee was the proximate cause of the injury, or if the injury resulted from the wilful intention of the employee to injure or kill himself or another. Kemp v. Atlas Fertilizer & Chemical Co., 197 So. 2d 485, 1967 Miss. LEXIS 1530 (Miss. 1967).

The death of an employee in the course of his employment who was shot and killed by the irate husband of a woman with whom he was having an affair did not arise out of the scope of his employment but resulted from an "act, actions, and activities" foreign thereto, and consequently was not compensable. Ellis v. Rose Oil Co., 190 So. 2d 450, 1966 Miss. LEXIS 1390 (Miss. 1966).

An assault by a third person is work-connected if it grows out of a quarrel whose subject matter is related to the work. John Hancock Trucking Co. v. Walker, 243 Miss. 487, 138 So. 2d 478, 1962 Miss. LEXIS 366 (Miss. 1962).

Death of one shot for some unknown reason by a fellow employee, whom in the discharge of his duty he was transporting to place of work, was one arising out of and in the course of employment. Watson v. National Burial Asso., 234 Miss. 749, 107 So. 2d 739, 1958 Miss. LEXIS 547 (Miss. 1958).

Where there is a wilful intention on part of the employee to injury himself, compensation is not payable under the workmen's compensation laws. L. B. Priester & Son v. McGee, 234 Miss. 471, 106 So. 2d 394, 1958 Miss. LEXIS 520 (Miss. 1958).

Evidence that employee was murdered by jilted suitor and that the only connection between her employment and cause of her death was that she was on duty at the time she was shot and was merely informing the slayer of the rules of the telephone company prohibiting visitors in operating room of the telephone exchange, and that the slayer immediately after shooting the employee turned a pistol upon himself and committed suicide, failed to establish that the employee was killed because of her employment, and therefore she was not under the protection of the Estate of West v. Southern Bell Tel. & Tel. Co., 228 Miss. 890, 90 So. 2d 1, 1956 Miss. LEXIS 578 (Miss. 1956).

Under the statute, if the injury or death has been caused by the wilful act of a third person it must be shown that such wilful act was directed against the employee because of his employment while so employed and working on the job, and there must be shown some causal connection between the injury and employment other than the mere fact that the employment brought the employee to the place where he was injured, and the employment must have been connected with the injury in some more direct manner than merely furnishing an opportunity for the employee to be assaulted. Brookhaven Steam Laundry v. Watts, 214 Miss. 569, 55 So. 2d 381, 1951 Miss. LEXIS 521 (Miss. 1951).

When an assault is unconnected with the employment, or is for reasons personal to the assailant and the one assaulted, or is not because the relation of employer and employee exists, and the employment is not the cause, though it may be the occasion of the wrongful act and may give a convenient opportunity for its execution, it is ordinarily held that the injury did not arise out of employment. Brookhaven Steam Laundry v. Watts, 214 Miss. 569, 55 So. 2d 381, 1951 Miss. LEXIS 521 (Miss. 1951).

The issue whether the claimant was assaulted because of his employment, while so employed and working on a job, was one of fact and for decision of the commission. Barry v. Sanders Co., 211 Miss. 656, 52 So. 2d 493, 1951 Miss. LEXIS 396 (Miss. 1951).

39. Horseplay.

Where employees were engaged in horseplay and afterward an employee was struck on the head with a shovel by fellow employee, under the Workmen's Compensation Law the assaulted employee is entitled to compensation for injury resulting, where the employment and nature of the work brought employee and fellow employee in close contact with each other and one of the hazards of such contact was that an assault might be committed by the other. Mutual Implement & Hardware Ins. Co. v. Pittman, 214 Miss. 823, 59 So. 2d 547, 1952 Miss. LEXIS 523 (Miss. 1952).

40. Forbidden acts.

Where the employee's act of lifting a sewing machine into a customer's car was within the sphere of his employment, the fact that he had been expressly forbidden to lift machines was not fatal to his claim for compensation for injuries resulting from the act. Kahne v. Robinson, 232 Miss. 670, 100 So. 2d 132, 100 So. 2d 585, 1958 Miss. LEXIS 315, 1958 Miss. LEXIS 316 (Miss. 1958).

41. Intoxication.

Mississippi Workers' Compensation Commission did not err by denying a claimant workers' compensation benefits, pursuant to Miss. Code Ann. § 71-3-7, because substantial evidence supported the Commission's factual finding that the claimant's intoxication at the time of his fall from the top of a wall at work was the proximate cause of his accident and injury. Payton v. Rod Cooke Constr. Co., 126 So. 3d 911, 2013 Miss. App. LEXIS 71 (Miss. Ct. App.), cert. denied, 127 So. 3d 1115, 2013 Miss. LEXIS 633 (Miss. 2013).

Employee admitted during testimony that the machine should have been turned off when working on it, and he admitted that he knew how to turn off the machine. He clearly was injured because he failed to properly operate the machine and his level of intoxication (a blood alcohol level of .129 percent about two hours after the accident),was significant; his intoxication was so significant, a pharmacologist opined that his injury was proximately caused by his intoxication, and therefore, pursuant to Miss. Code Ann. § 71-3-7, he was not entitled to benefits. Sanderson Farms, Inc. v. Deering, 909 So. 2d 1169, 2005 Miss. App. LEXIS 77 (Miss. Ct. App. 2005).

Worker's claim that a drug screen taken shortly after the injury occurred when he fell off a tree that he was trying to trim with a chain saw after the tree had been pushed over by a backhoe, which showed the presence of cannabinoids or marijuana in the worker's body at a concentration level of 111 nanograms per milliliter, was the result of passive exposure to marijuana smoke or use in the distant past was rebutted by expert testimony that such a concentration level was inconsistent with such claims; worker's claim for workers' compensation benefits was properly denied. Edwards v. World Wide Pers. Servs., 843 So. 2d 730, 2002 Miss. App. LEXIS 449 (Miss. Ct. App. 2002).

Intoxication or impairment by other substances, legal or illegal, is not an issue in whether benefits for an injury arising on the job are payable; although the discovery of such conduct before it causes injury may appropriately result in the termination or other discipline of the employee, these considerations cannot result in the denial of disability benefits once an otherwise compensable injury has occurred. Tyson Foods v. Hilliard, 772 So. 2d 1103, 2000 Miss. App. LEXIS 582 (Miss. Ct. App. 2000).

The burden is on the employer to show that the employee's intoxication was the proximate cause of his injury, and in the absence of such proof evidence that the employee had been drinking is not sufficient to enable the employer to avoid liability to pay compensation. Murphy v. Jac-See Packing Co., 208 So. 2d 773, 1968 Miss. LEXIS 1428 (Miss. 1968).

Claimant, who admittedly had previously taken one or two drinks of whisky, stepped in a hole and broke his leg when he stopped by the roadside to relieve himself was entitled to compensation upon the determination of the commission, from conflicting evidence, that intoxication was not the proximate cause of his injury. Reading & Bates, Inc. v. Whittington, 208 So. 2d 437, 1968 Miss. LEXIS 1408 (Miss. 1968).

This section [Code 1942, § 6998-04] places the burden upon the employer to prove that claimant was intoxicated at the time of the accident and that his intoxication was the proximate cause of his injury. Reading & Bates, Inc. v. Whittington, 208 So. 2d 437, 1968 Miss. LEXIS 1408 (Miss. 1968).

The only exceptions provided by this section [Code 1942, § 6998-04] to an employer's liability for payment of compensation is where the intoxication of the employee was the proximate cause of the injury, or if the injury resulted from the wilful intention of the employee to injure or kill himself or another. Kemp v. Atlas Fertilizer & Chemical Co., 197 So. 2d 485, 1967 Miss. LEXIS 1530 (Miss. 1967).

Evidence was insufficient to show that intoxication was the cause of the death of a truck driver who was stuck by logs falling off another truck after he had parked his truck pursuant to instructions in that regard, and after he had been told that he was laid off for the rest of the day for being intoxicated. Smith Bros. v. Dependents of Cleveland, 240 Miss. 100, 126 So. 2d 519, 1961 Miss. LEXIS 435 (Miss. 1961).

Intoxication is an affirmative defense with the burden of proof upon the employer pleading it. United States Fidelity & Guaranty Co. v. Collins, 231 Miss. 319, 95 So. 2d 456, 1957 Miss. LEXIS 516, 1957 Miss. LEXIS 517 (Miss. 1957).

Where the evidence was conflicting upon the issue of whether the injured employee was intoxicated at the time of the accident, and if so, whether his intoxication was a proximate cause of his injuries, finding of the attorney-referee and commission in favor of the employee was affirmed. United States Fidelity & Guaranty Co. v. Collins, 231 Miss. 319, 95 So. 2d 456, 1957 Miss. LEXIS 516, 1957 Miss. LEXIS 517 (Miss. 1957).

42. Imported danger.

Where an employee was in his car just outside his employer's premises waiting for a company sponsored Christmas dinner to begin, when he died from a gunshot wound to his chest from his own pistol found lying on the seat, which pistol he was accustomed to keep in the car, and there was no showing that the death had been caused by another party, the presumption of causal connection between the employment and the death was not applicable, since the death did not arise out of his employment, and since moreover, the source of the injury was within the doctrine of "imported danger" in that it was a hazard brought on to the employment premises by the decedent himself, and compensation was not recoverable by the decedent's dependents. Space Steel Corp. v. Jones, Dependents Of., 248 So. 2d 807, 1971 Miss. LEXIS 1494 (Miss. 1971).

The term "imported danger" is a convenient label for a class of cases in which the source of the injury is a hazard brought onto the employment premises by the claimant himself. Earnest v. Interstate Life & Acci. Ins. Co., 238 Miss. 648, 119 So. 2d 782, 1960 Miss. LEXIS 450 (Miss. 1960).

Where admittedly a shotgun carried by an insurance salesman had no connection with his work and was for his own personal pleasure, the shotgun represented an "imported danger," and the injury sustained by the salesman when the shotgun accidentally discharged was not compensable. Earnest v. Interstate Life & Acci. Ins. Co., 238 Miss. 648, 119 So. 2d 782, 1960 Miss. LEXIS 450 (Miss. 1960).

43. Liability of contractors and subcontractors.

Sheriff's department was not a statutory employer because the county contracted directly with a health care provider to provide comprehensive medical care for inmates and neither the county, nor the sheriff's department had a contract with anyone else when a nurse who was hired by the provider was injured in the course of the nurse's duties at a detention center and the provider did not carry workers' compensation coverage at the time. Rollins v. Hinds Cty. Sheriff's Dep't & Miss. Pub. Entities' Workers' Cpmpensation Trust, 306 So. 3d 702, 2020 Miss. LEXIS 482 (Miss. 2020).

Contractor was a network-systems engineer's statutory employer under Miss. Code Ann. § 71-3-9, and therefore immune from the engineer's common law tort claims, where affidavit testimony showed that the contractor was engaged in the business of ship construction and repair at its shipyard during the time the engineer worked there, it required subcontractors who performed work at the shipyard to carry workers' compensation insurance to cover their own employees, and there was no evidence suggesting that the contractor was the owner of the ship it was constructing. Hibbler v. Ingalls Shipbuilding Shipyard, 298 So. 3d 1022, 2019 Miss. App. LEXIS 616 (Miss. Ct. App. 2019), cert. denied, 298 So. 3d 414, 2020 Miss. LEXIS 282 (Miss. 2020).

Where the claimant was employed as a nurse by the employer at a detention center, and the employer had a contract with the county to provide comprehensive medical care to inmates at the detention center, the Workers' Compensation Commission properly ruled that the detention center was not liable for workers' compensation benefits because it was not a contractor and thus not the claimant's statutory employer as a property owner did not become a contractor just because it contracted with another entity to do work on its premises; and there was only a single contract between the county and the employer, and, by definition, that was not a subcontract. Rollins v. Hinds Cty. Sheriff's Dep't, — So. 3d —, 2019 Miss. App. LEXIS 609 (Miss. Ct. App. Dec. 17, 2019), aff'd, 306 So. 3d 702, 2020 Miss. LEXIS 482 (Miss. 2020).

Trial court erred in granting a general contractor a partial summary judgment in its action against its insurer for breach of contract, declaratory judgment, and defamation because the contractor was statutorily required to secure workers' compensation coverage for the employees of its uninsured subcontractors where the contractor chose to use subcontractors who employed fewer than five employees and who did not secure workers' compensation coverage, and the number of employees of the subcontractor was not a factor in determining general-contractor liability under the Workers' Compensation Act. Builders & Contrs. Ass'n of Miss. v. Laser Line Constr. Co., LLC, — So. 3d —, 2017 Miss. LEXIS 270 (Miss. June 29, 2017).

Employer was a contractor, not a subcontractor, of the three timber owners, as neither of the three companies had already contracted for the performance of the work done by the employer; neither company was the employee's statutory employer under Miss. Code Ann. § 71-3-7 and had no statutory responsibility to insure the employee; assuming the Mississippi Workers' Compensation Commission (Commission) was empowered under Miss. Code Ann. § 71-3-37(13) to determine whether another company was contractually bound, the Commission was entitled to accept the testimony that the company never agreed to provide workers' compensation coverage for the employer, but instead, required the employer to have its own workers' compensation insurance. Miss. Loggers Self Insured Fund, Inc. v. Andy Kaiser Logging, 992 So. 2d 649, 2008 Miss. App. LEXIS 286 (Miss. Ct. App.), cert. denied, 997 So. 2d 924, 2008 Miss. LEXIS 537 (Miss. 2008).

Daughter of decedent, who was killed while hauling logs for a subcontractor, was not entitled to bring a worker's compensation claim, pursuant to Miss. Code Ann. § 71-3-9 because workers' compensation payments were the exclusive remedy, and subcontractor had secured payment of compensation in compliance with Miss. Code Ann. § 71-3-7. Lamar v. Thomas Fowler Trucking, Inc., 956 So. 2d 878, 2007 Miss. LEXIS 279 (Miss. 2007).

As an employee's complaint against an employer and general contractor sounded in negligence, and Mississippi had the "most significant relationship" with the action, Mississippi, not Alabama, law applied. Therefore, the contractor was immune from suit under Miss. Code Ann. § 71-3-7 because the employer had workers' compensation coverage for him. Powe v. Roy Anderson Constr. Co., 910 So. 2d 1197, 2005 Miss. App. LEXIS 603 (Miss. Ct. App. 2005).

Where the decedent's employer agreed under the subcontract with the contractor to provide workers' compensation coverage to the employees, and the employer did so, the contractor was entitled to summary judgment pursuant to Miss. R. Civ. P. 56 in the decedent's heirs' wrongful death action; construing Miss. Code Ann. § 71-3-7, relating to a contractor's obligation to provide workers' compensation coverage, and Miss. Code Ann. § 71-3-9, the workers' compensation exclusivity provision, together, it was determined that where the employer provided compensation coverage to its employees pursuant to the contract with the contractor, the contractor qualified as a statutory employer and was immune from tort liability claims by the heirs. Thornton v. W. E. Blain & Sons, Inc., 878 So. 2d 1082, 2004 Miss. App. LEXIS 715 (Miss. Ct. App. 2004).

Where a widow whose husband died while working for a general contractor sued the contractor based on its alleged failure to properly repair damaged bolts, the trial court properly granted summary judgment to the contractor as its conduct was at most gross negligence or reckless indifference, which, as a matter of law, did not defeat the exclusivity provision of the workers' compensation statutes. Bevis v. Linkous Constr. Co., 856 So. 2d 535, 2003 Miss. App. LEXIS 445, 2003 Miss. App. LEXIS 773 (Miss. Ct. App. 2003).

A subcontractor or general contractor is entitled to immunity where a sub-subcontractor failed to secure coverage for the benefit of an injured employee. Castillo v. M.E.K. Constr., Inc., 741 So. 2d 332, 1999 Miss. App. LEXIS 274 (Miss. Ct. App. 1999).

A construction company was the general contractor and the deceased's statutory employer where the company was established for the very function of operating as a general contractor and the president of the company was the general contractor. Castillo v. M.E.K. Constr., Inc., 741 So. 2d 332, 1999 Miss. App. LEXIS 274 (Miss. Ct. App. 1999).

Prime contractor was statutory employer of sub-subcontractor's employee, and thus, was immune from liability under Workers' Compensation Act's exclusivity of remedy provision in negligence action brought by injured employee, where sub-subcontractor provided compensation coverage to its employees pursuant to its contract with prime contractor. Bradshaw v. Rudder, 227 Miss. 143, 85 So. 2d 778, 1956 Miss. LEXIS 665 (Miss. 1956).

Sub-subcontractor satisfied definition of "subcontractor" under workers' compensation statute, where it contracted with subcontractor to complete portions of steel work on building, and subcontractor had previously contracted with general contractor to do structural steel work on building; sub- subcontractor entered into express contract with subcontractor for performance of act which subcontractor had already contracted to complete. Crowe v. Brasfield & Gorrie Gen. Contr., 688 So. 2d 752, 1996 Miss. LEXIS 691 (Miss. 1996).

Cable lineman supervisor was entitled to worker's compensation benefits, although he was subcontractor and not employee, where owner of company for which subcontractor was performing job knew subcontract was being performed by 6 workmen and had agreed to provide workers' compensation coverage for them, even though owner did not know that subcontractor himself was one of crew members. Champion Cable Constr. Co. v. Monts, 511 So. 2d 924, 1987 Miss. LEXIS 2682 (Miss. 1987).

In tort action brought by employee of casing crew injured while working at oil well drilling site, oil drilling contractor was general contractor in drilling well, casing company was subcontractor for setting casing, and thus statutory obligation imposed upon general contractor to provide workers' compensation coverage rendered him immune from third party tort liability, notwithstanding his one-fourth interest in oil, gas, and minerals sought by drilling well. Brown v. Williams, 504 So. 2d 1188, 1987 Miss. LEXIS 2322 (Miss. 1987).

Requirement that contractor assure worker's compensation coverage for employees of subcontractor does not entitle contractor to defense under exclusiveness of liability statute (§ 71-3-9) where subcontractor has in fact obtained coverage. Nash v. Damson Oil Corp., 480 So. 2d 1095, 1985 Miss. LEXIS 2305 (Miss. 1985).

A general contractor would be immune from a common law negligence action brought by its subcontractor's employee, where the general contractor was the statutory employer of the employee inasmuch as the general contractor "secured" compensation insurance for the benefit of the subcontractor's employee within the meaning of § 71-3-7 by requiring the subcontractor to secure a policy of workmen's compensation insurance on its employees. Doubleday v. Boyd Constr. Co., 418 So. 2d 823, 1982 Miss. LEXIS 2130 (Miss. 1982).

Under evidence showing that in engaging a subcontractor to perform certain work, the contractor retained control of the conduct of the subcontractor with respect to the work to be done, and the order, method, and plan of that work, the subcontractor was not an independent contractor, but was an employee of the contractor, and the deceased employee of the subcontractor, and the workmen's compensation commission did not err in awarding benefits to the dependents of the deceased employee. Louis A. Gily & Sons v. Dependents of Shankle, 246 Miss. 384, 149 So. 2d 480, 1963 Miss. LEXIS 452 (Miss. 1963).

One having a right to cut and remove timber from another's land, who engages another to cut it, is not liable as a prime contractor for compensation to an injured employee of such other. Rodgers v. Phillips Lumber Co., 241 Miss. 590, 130 So. 2d 856, 1961 Miss. LEXIS 376 (Miss. 1961).

In view of the common law rule, which was not changed by the Workmen's Compensation Law, that partners are jointly and severally liable for partnership obligations, and the provisions of Code 1942, § 6998-39, a carrier which had written a compensation policy for one of the partners in the partnership, was liable for compensation benefits to the partnership employee. United States Fidelity & Guaranty Co. v. Collins, 231 Miss. 319, 95 So. 2d 456, 1957 Miss. LEXIS 516, 1957 Miss. LEXIS 517 (Miss. 1957).

Since a compensation policy secured in his own behalf by one of the members of a partnership doing subcontracting work covered the compensation rights of injured partnership employee, the secondary liability of the prime contractor and its carrier did not take effect as a direct obligation upon the ground that the partnership failed to secure coverage of its employees. United States Fidelity & Guaranty Co. v. Collins, 231 Miss. 319, 95 So. 2d 456, 1957 Miss. LEXIS 516, 1957 Miss. LEXIS 517 (Miss. 1957).

Immunity to common-law suits as provided in Code 1942, §§ 6998-05 and 6998-36 is extended to statutory employers who come within the provisions of this section [Code 1942, § 6998-04], holding a general contractor to be the statutory employer of a subcontractor's employee so that latter's exclusive remedy was under the Workmen's Compensation Law. Mosley v. Jones, 224 Miss. 725, 80 So. 2d 819, 1955 Miss. LEXIS 535 (Miss. 1955).

The purpose of legislature was to prevent the general contractor from escaping liability by employing subcontractors who were not financially responsible and leaving the employees unprotected. Mills v. Barrett, 213 Miss. 171, 56 So. 2d 485, 1952 Miss. LEXIS 346 (Miss. 1952).

The statutory language is plain, clear, and unambiguous and has the effect of making the employees of a subcontractor, where the subcontractor does not carry insurance for the protection of his employees, the employees of the principal or general contractor within the meaning of the Workmen's Compensation Law. Mills v. Barrett, 213 Miss. 171, 56 So. 2d 485, 1952 Miss. LEXIS 346 (Miss. 1952).

Where an employee of subcontractor was injured March 1950 the liability was governed by the 1948 Workmen's Compensation Law which provided that the contractor shall secure payment of compensation to all employees of subcontractor which are not under compensation, and was not governed by the 1950 amendment which provided that the number of employees of the subcontractor and not the contractor shall be the factor determining liability. Mills v. Barrett, 213 Miss. 171, 56 So. 2d 485, 1952 Miss. LEXIS 346 (Miss. 1952).

44. Independent contractors, generally.

Claimant has burden of proving that he sustained an accidental injury arising out of and in the course and scope of his employment, and that the injury caused the disability for which he is claiming benefits. Sonford Products Corp. v. Freels, 495 So. 2d 468, 1986 Miss. LEXIS 2658 (Miss. 1986), overruled, Bickham v. Department of Mental Health, 592 So. 2d 96, 1991 Miss. LEXIS 978 (Miss. 1991).

The two tests to be considered in analyzing an employee-independent contractor question are the control test and the relative nature of the work test, the latter of which pertains to the character of the claimant's work or business and its relation to the employer's business. Boyd v. Crosby Lumber & Mfg. Co., 250 Miss. 433, 166 So. 2d 106, 1964 Miss. LEXIS 474 (Miss. 1964).

The fact that a truck driver, injured while hauling gravel, owned and furnished his own truck for hauling the gravel was not a determinative factor in determining whether the truck driver was an employee or independent contractor. Wade v. Traxler Gravel Co., 232 Miss. 592, 100 So. 2d 103, 1958 Miss. LEXIS 308 (Miss. 1958).

The fact that a truck driver, injured while hauling gravel, was paid a unit price per yard for the gravel he hauled, instead of an hourly wage, was not proof in itself that the truck driver was an independent contractor. Wade v. Traxler Gravel Co., 232 Miss. 592, 100 So. 2d 103, 1958 Miss. LEXIS 308 (Miss. 1958).

Tests to determine whether relationship of master and servant or independent contractor exists are as follows: Whether the principal master has the power to terminate the contract at will; whether he has the power to fix the price and payment for work or vitally controls the manner and time of payment; whether he furnishes the means and appliances for the work; whether he has control of the premises; whether he furnishes the materials upon which the work is done and receives the output thereof, the contractor dealing with no other person in respect to the output; whether he has the right to prescribe and furnish the details of the kind and character of the work to be done; whether he has the right to supervise and inspect the work during the course of employment; whether he has the right to direct the details of the manner in which the work is to be done; and whether he has the right to employ and discharge the subemployees and to fix their compensation, and is obliged to pay the wages of the said employees. Employers Ins. Co. v. Dean, 227 Miss. 501, 86 So. 2d 307, 1956 Miss. LEXIS 719 (Miss. 1956).

45. —Entitled to benefits.

Cable lineman supervisor was entitled to worker's compensation benefits, although he was subcontractor and not employee, where owner of company for which subcontractor was performing job knew subcontract was being performed by 6 workmen and had agreed to provide workers' compensation coverage for them, even though owner did not know that subcontractor himself was one of crew members. Champion Cable Constr. Co. v. Monts, 511 So. 2d 924, 1987 Miss. LEXIS 2682 (Miss. 1987).

Where the duration and continuity of a plumber's work for an operative builder made his activities an integral part of the builder's production process, he was an employee and not an independent contractor. Empire Home Builders v. Guthrie, 187 So. 2d 17, 1966 Miss. LEXIS 1336 (Miss. 1966).

Where a truck hauler of logs had worked exclusively for 12 years for one logging company and it was recognized that the hauler could quit at any time or that the company had the right to fire him, the hauler was not an independent contractor, but his work was so meshed into an integral part of the business of the company that the hauler and his injured employee were both employees of the company so as to entitle the employee to compensation. Brown v. E. L. Bruce Co., 253 Miss. 1, 175 So. 2d 151, 1965 Miss. LEXIS 970 (Miss. 1965).

A taxicab driver, allegedly operating on a "franchise" basis, who was required to operate the same kind of car with the same mechanical equipment furnished by the cab company, to wear the same kind of uniform, to receive his calls for passengers from the same central point, to buy gas and oil from the company, and was subject to the same rules of conduct as all of its other drivers, was participating in the business of the company as an integral part of it and was an employee. White Top & Safeway Cab Co. v. Wright, 251 Miss. 830, 171 So. 2d 510, 1965 Miss. LEXIS 908 (Miss. 1965).

The finding of the workmen's compensation commission that a log hauler and an injured claimant employed by him were employees of a mill operator was warranted where, notwithstanding that the contract between the mill operator and the hauler provided that the former should have no control over the hauling, the evidence, including evidence of the method of payment and the right to terminate the relationship, showed the mill operator had control over the hauler, and it further appeared that the injured claimant's work for the mill operators and the hauler was an integral part of the mill operator's production process, and the hauler was not performing an independent business service and was not engaged in a business of his own. Boyd v. Crosby Lumber & Mfg. Co., 250 Miss. 433, 166 So. 2d 106, 1964 Miss. LEXIS 474 (Miss. 1964).

In view of evidence as to the degree of control exercised by truck lessee over the activities of the employee truck driver, and the fact that the employee truck driver performed work which carried out an integral part of the truck lessee's business, the relationship was one of employment rather than that of independent contractor. Burnham Van Service, Inc. v. Dependents of Moore, 250 Miss. 165, 164 So. 2d 733, 1964 Miss. LEXIS 453 (Miss. 1964).

Evidence, including a showing that the foreman, who had charge of harvesting pecans on certain lands of employer, hired, transported and directed claimant and other pickers, claimant's employment could be terminated at any time by the employer, so that the employer, through his foreman, exercised control over every phase of claimant's work, established that claimant was an employee rather than an independent contractor. Selph v. Stricker, 238 Miss. 597, 119 So. 2d 351, 1960 Miss. LEXIS 443 (Miss. 1960).

One hauling in his own truck, at his own expense, on a unit basis, gravel to be used in surfacing, held an employee of the contractor doing the surfacing, and not an independent contractor. Bush v. Dependents of Byrd, 234 Miss. 782, 108 So. 2d 211, 1959 Miss. LEXIS 555 (Miss. 1959).

Under evidence showing that, among other things, the work performed by three commissioned salesmen, who drove their own automobiles, constituted an integral part of the business of a partnership selling sewing machines, the partnership controlled the maximum price of the machines, could accept or reject any deferred payment contracts, required the salesmen to service the machines sold, could fire any of the salesmen at will, and the salesmen turned over to the partnership all funds collected, the attorney-referee and the commission did not err in finding that the commission salesmen were employees and not independent contractors, so that the partnership, which employed five additional persons, was an employer subject to the provisions of the Workmen's Compensation Law. Kahne v. Robinson, 232 Miss. 670, 100 So. 2d 132, 100 So. 2d 585, 1958 Miss. LEXIS 315, 1958 Miss. LEXIS 316 (Miss. 1958).

In a proceeding for workman's compensation benefits for injury sustained while hauling gravel by a truck driver, who owned and furnished his own truck, evidence that the truck driver was hired to haul gravel at so much per cubic yard and according to the length of the haul, did not contract to do a set piece of work, his employment was not to last for a specified period, and that the gravel company controlled the loading of the truck driver's truck, and through ownership and operation of the loading machinery controlled, in a measure, the number of hours per day the driver could haul, determined the kind and quality of gravel that the driver should haul, the distance which the driver was to travel, and the amount of pay which the driver was to receive for delivering gravel to the purchaser, and could terminate the driver's services at any time, showed an employer-employee relationship and not that of an independent contractor. Wade v. Traxler Gravel Co., 232 Miss. 592, 100 So. 2d 103, 1958 Miss. LEXIS 308 (Miss. 1958).

A compensation carrier which had issued a policy to a corporation insuring, by virtue of a separate clause, salesmen at a time when the corporation had only two salesmen, both of whom were also stockholders and officers, and had admittedly received premiums based upon the wages of the secretary-salesman, was estopped to deny that the secretary-salesman, whose death arose out of and in the course of his employment while doing nonsupervisory work, was not covered by the Workmen's Compensation Law. M. E. Badon Refrigeration Co. v. Badon, 231 Miss. 113, 95 So. 2d 114, 1957 Miss. LEXIS 495 (Miss. 1957).

46. —Not entitled to benefits.

Restrictions imposed by the seller of standing timber on its removal do not make the buyer a contractor for its removal so as to render him liable for compensation to a workman of one employed by him. Nickerson v. Patridge, 241 Miss. 40, 128 So. 2d 751, 1961 Miss. LEXIS 316 (Miss. 1961).

Operators of sawmills and their employees who cut and saw standing timber owned by a planing mill and deliver it there for a stated sum per thousand feet, are not employees of the planing mill, which merely designated the timber to be cut, within the Employers Liability Ins. Co. v. Haltom, 235 Miss. 74, 108 So. 2d 29, 1959 Miss. LEXIS 404 (Miss. 1959).

Denial of compensation upon the ground that claimants' decedent was an independent contractor at the time he was killed on lumber company's premises while unloading logs from a truck was supported by substantial evidence. Ainsworth v. Long-Bell Lumber Co., 233 Miss. 38, 101 So. 2d 100, 1958 Miss. LEXIS 354 (Miss. 1958).

Where claimant was a painter who was engaged in separate business and held himself out to the public as performing an independent service in that he furnished his own tools and equipment, employed his own helpers and paid them their wages, directed the manner of the work, and contracted for a definite completed job, and that he represented the will of his employer only as the result of his work, the claimant was an independent contractor and was not entitled to compensation for injuries sustained. Tranum v. Mitchell Engineering Co., 223 Miss. 221, 78 So. 2d 111, 1955 Miss. LEXIS 373 (Miss. 1955).

In a suit for workmen's compensation benefits, where deceased was hired to splice a cable on oil well drilling rig and he was not subject to supervision or control of drilling company, and he began to work when it suited him, finished his job and presented his bill, the deceased was an independent contractor and not within coverage under Workmen's Compensation Law. Kughn v. Rex Drilling Co., 217 Miss. 434, 64 So. 2d 582, 1953 Miss. LEXIS 448 (Miss. 1953).

Where deceased, who was a production superintendent of oil well drilling company, after completing his daily round of inspection, drove automobile furnished for the use of the performance of his duties to site of another drilling company and, as an independent contractor, spliced a cable, at which time he became ill and died from cerebral hemorrhage, his death did not arise out of or in course of his employment and his widow was not entitled to benefits under Workmen's Compensation Law. Kughn v. Rex Drilling Co., 217 Miss. 434, 64 So. 2d 582, 1953 Miss. LEXIS 448 (Miss. 1953).

Where two brothers made an agreement for cutting and hauling of timber and employed their own labor in the performance of the contract, regulated their own time for going to work and quitting, used their own trucks and own axes and saws, determined for themselves the number of workmen that they would employ and fixed the wages of their employees, the brothers were independent contractors and the death of one of the brothers during the logging operation was not subject to compensation under the Workmen's Compensation Law. Carr v. Crabtree, 212 Miss. 656, 55 So. 2d 408, 1951 Miss. LEXIS 495 (Miss. 1951).

47. Review.

Although the employer claimed that apportioning 50 percent of the employee's benefits to it was improper because stress could not be held to be 50 percent responsible for the employee's heart attack, and that the employee's retirement benefits had to be included in the computation of the employee's average weekly wage, the employer failed to cite any authority in support of its arguments; therefore, the issues were procedurally barred as an assignment of error that was unsupported by any legal authority and need not be considered by the appellate court. Miss. Dep't of Pub. Safety v. Pickens, 859 So. 2d 1057, 2003 Miss. App. LEXIS 1092 (Miss. Ct. App. 2003).

Standard of review in workers' compensation cases is limited and substantial evidence test is used. Inman v. Coca-Cola/Dr. Pepper Bottling Co., 678 So. 2d 992, 1996 Miss. LEXIS 420 (Miss. 1996).

Workers' Compensation Commission is trier and finder of facts in compensation claim; Supreme Court will reverse Commission's order only if it finds that order clearly erroneous and contrary to overwhelming weight of evidence. Inman v. Coca-Cola/Dr. Pepper Bottling Co., 678 So. 2d 992, 1996 Miss. LEXIS 420 (Miss. 1996).

Where Workers' Compensation Commission, on review of a decision of its hearing officer, enters order remanding case to administrative judge for further proceedings or testimony, the order is interlocutory only and is not appealable. Blankenship v. Delta Pride Catfish, 676 So. 2d 914, 1996 Miss. LEXIS 319 (Miss. 1996).

Order is interlocutory, and not appealable, when substantial rights of the parties involved in action remain undetermined and when cause is retained for further action. Blankenship v. Delta Pride Catfish, 676 So. 2d 914, 1996 Miss. LEXIS 319 (Miss. 1996).

Workers' Compensation Commission's order was final for purposes of appeal because it determined all matters among the parties and nothing had been retained by Commission or remanded to administrative law judge for further consideration. Blankenship v. Delta Pride Catfish, 676 So. 2d 914, 1996 Miss. LEXIS 319 (Miss. 1996).

A finding that a claimant was not entitled to permanent disability benefits because his disability, which arose from slippage in the spine, was attributable entirely to preexisting spondylolisthesis was not supported by substantial evidence where there was conflicting medical testimony from 2 treating physicians as to the cause of the claimant's permanent disability and neither physician could determine how and when the slippage actually occurred, since close questions of compensability should be resolved in favor of the claimant, and the Workers' Compensation Act should be liberally construed to carry out its remedial purpose. McNeese v. Cooper Tire & Rubber Co., 627 So. 2d 321, 1993 Miss. LEXIS 444 (Miss. 1993).

There was substantial evidence in a physician's testimony to support the Workers' Compensation Commission's determination as to the date a claimant reached maximum medical recovery, and therefore the circuit court erred in finding a different date based on the opinion of another physician. Jordan v. Hercules, Inc., 600 So. 2d 179, 1992 Miss. LEXIS 224 (Miss. 1992), but see Dulaney v. National Pizza Co., 733 So. 2d 301, 1998 Miss. App. LEXIS 990 (Miss. Ct. App. 1998).

While the Administrative Judge is generally, within the Workers' Compensation Commission, the individual who conducts the hearing and hears the live testimony, the Commission itself is, in law, the finder of the facts, and on judicial review, the Commission's findings and decisions are subject to the normal deferential standards, notwithstanding the Administrative Judge's actions. Walker Mfg. Co. v. Cantrell, 577 So. 2d 1243, 1991 Miss. LEXIS 190 (Miss. 1991).

In reversing the Commission's fact-finding, reviewing courts are advised to provided detailed, written support for their conclusions. R.C. Petroleum, Inc. v. Hernandez, 555 So. 2d 1017, 1990 Miss. LEXIS 10 (Miss. 1990).

Decisions of the Mississippi Workers' Compensation Commission on issues of fact will not be overturned if they are supported by substantial evidence. The Commission is the trier of facts as well as the judge of the credibility of the witnesses. Doubtful cases should be resolved in favor of compensation so as to fulfill the beneficial purposes of the statute. Miller Transporters, Inc. v. Guthrie, 554 So. 2d 917, 1989 Miss. LEXIS 495 (Miss. 1989).

Because in Mississippi right to compensation benefits is committed to both trier of fact in bad faith tort action and administrative factfinder under Workers' Compensation Act, and resolution of bad faith claim is totally dependent on validity of underlying compensation claim, exhaustion of administrative remedies on underlying compensation issue is required where plaintiff has initiated administrative proceedings prior to filing bad faith tort action, however, decision is limited to those situations were injured claimant institutes administrative proceedings and subsequently files bad faith claim prior to final conclusion of administrative process, and if administrative process is terminated at some point then no exhaustion of administrative remedies requirement exists. Kitchens v. Liberty Mut. Ins. Co., 659 F. Supp. 467, 1987 U.S. Dist. LEXIS 13850 (S.D. Miss. 1987), dismissed, 1987 U.S. Dist. LEXIS 13868 (S.D. Miss. Oct. 20, 1987).

Determination of the degree of contribution of the preexisting disease or injury is a question of fact for the Workmen's Compensation Commission which should not be disturbed unless the finding lacks substantial support in the evidence or is manifestly wrong. Stuart Mfg. Co. v. Walker, 313 So. 2d 574, 1975 Miss. LEXIS 1676 (Miss. 1975).

An adverse decision on the merits of the claim by the employee while he was alive bars a dependency claim under the doctrine of res judicata, for the questions have already been fully litigated, and all parties were involved and necessarily so in the manner in which the injury was received. Proctor v. Ingalls Shipbuilding Corp., 254 Miss. 907, 183 So. 2d 483, 1966 Miss. LEXIS 1586 (Miss. 1966).

The time within which an award affirmed by the supreme court must be paid in order to avoid the statutory penalty runs from the time a suggestion of error was overruled, and not from the subsequent issue of the court's mandate. Decker v. Bryan Bros. Packing Co., 249 Miss. 6, 162 So. 2d 648, 1964 Miss. LEXIS 369 (Miss. 1964).

Where the attorney-referee and commission had adjudicated liability for compensation benefits as to the insured member of a partnership and his insurance carrier, the failure to adjudicate the liability of the uninsured partner, who was also liable for payment of the compensation, gave the insurance carrier an appealable interest in the correctness of the commission's order; hence, the order of the commission was modified so as to adjudicate the liability for payment and compensation against the uninsured partner in addition to the insured partner's carrier. United States Fidelity & Guaranty Co. v. Collins, 231 Miss. 319, 95 So. 2d 456, 1957 Miss. LEXIS 516, 1957 Miss. LEXIS 517 (Miss. 1957).

48. Immunity.

Owner of a petroleum refinery plant was not immune from a negligence action filed by a contractor's employee, and thus, it was subject to the employee's tort claim as "any other party," because it was not statutory employer of the employee; the owner had no duty as an employer or contractor to secure workers' compensation insurance, and its act of voluntarily purchasing coverage did not change its status. Thomas v. Chevron U.S.A., Inc., 212 So. 3d 58, 2017 Miss. LEXIS 27 (Miss. 2017).

Decedent's employer was not entitled to immunity from suit under Miss. Code Ann. § 71-3-7 because it did not indirectly secure workers compensation coverage for its employees by reimbursing a timber company, for whom the employer was a subcontractor, for the workers compensation coverage it obtained for the employer's employees. The court rejected the employer's argument that it was entitled to "down-the-line" immunity because it assumed that it was the legislative intent not to create this immunity. Lamar v. Thomas Fowler Trucking, Inc., 956 So. 2d 911, 2006 Miss. App. LEXIS 249 (Miss. Ct. App. 2006), aff'd, 956 So. 2d 878, 2007 Miss. LEXIS 279 (Miss. 2007).

49. Wage-earning potential.

Administrative law judge (ALJ) and the Workers' Compensation Commission both failed to recognize that the claimant's return to work created a rebuttable presumption that the claimant suffered no loss of earning capacity. The ALJ committed legal error by failing to recognize this presumption, and the Commission and the appellate court failed to correct the error. Hudspeth Reg'l Ctr. v. Mitchell, 202 So. 3d 609, 2016 Miss. LEXIS 438 (Miss. 2016), dismissed, — So. 3d —, 2019 Miss. App. LEXIS 179 (Miss. Ct. App. 2019).

Mississippi Workers' Compensation Commission's finding that there was no loss of wage-earning capacity was supported by substantial evidence because the evidence showed that the claimant could have returned to the claimant's previous job had there been a job available, and that the claimant could have found employment earning the same amount of pre-injury income. Whiddon v. Southern Concrete Pumping, LLC, 114 So. 3d 18, 2013 Miss. App. LEXIS 208 (Miss. Ct. App. 2013).

Denial of permanent partial disability benefits to the employee in a workers' compensation action was improper because his post-injury income would have been higher but for a climbing restriction and therefore, the Workers' Compensation Commission erred by finding that the injury had no impact on his wage-earning potential. Gregg v. Natchez Trace Elec. Power Ass'n, 64 So. 3d 473, 2011 Miss. LEXIS 280 (Miss. 2011).

OPINIONS OF THE ATTORNEY GENERAL

County jail inmates working on city property are not "employees" within meaning of Section 71-3-7 so as to render city liable for worker's compensation coverage of such individuals. Navarro, July 29, 1992, A.G. Op. #92-0555.

Workers' compensation would cover the expenses for employees who become ill as a result of smallpox vaccination, and the fact that the vaccine is not licensed when administered would not affect the coverage. Thompson, Sept. 18, 2002, A.G. Op. #02-0549.

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Insured's receipt of or right to workmen's compensation benefits as affecting recovery under accident, hospital, or medical expense policy. 40 A.L.R.3d 1012.

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Right to jury trial in action for retaliatory discharge from employment. 52 A.L.R.4th 1141.

Workers' compensation: incarceration as terminating benefits. 54 A.L.R.4th 241.

Workers' compensation: injuries incurred while traveling to or from work with employer's receipts. 63 A.L.R.4th 253.

Workers' compensation: effect of allegation that injury was caused by, or occurred during course of, worker's illegal conduct. 73 A.L.R.4th 270.

Workers' compensation: compensability of injuries incurred traveling to or from medical treatment of earlier compensable injury. 83 A.L.R.4th 110.

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Right to Workers' Compensation For Emotional Distress or Like Injury Suffered by Claimant as Result of Sudden Stimuli Involving Nonpersonnel Action – Compensability Under Particular Circumstances. 84 A.L.R.5th 249.

Right to workers' compensation for emotional distress or like injury suffered by claimant as a result of sudden emotional stimuli involving personnel action. 82 A.L.R.5th 149.

Right to workers' compensation for emotional distress or like injury suffered by claimant as result of nonsudden stimuli – Requisites of, and factors affecting, compensability. 106 A.L.R.5th 111.

Right to workers' compensation for physical injury or illness suffered by claimant as result of sudden mental stimuli – Compensability under particular circumstances. 107 A.L.R.5th 441.

Right to workers' compensation for emotional distress or like injury suffered by claimant as result of nonsudden stimuli – Compensability under particular circumstances. 108 A.L.R.5th 1.

Right to workers' compensation for physical injury or illness suffered by claimant as result of sudden mental stimuli – Right to compensation under particular statutory provisions and requisites of, and factors affecting, compensability. 109 A.L.R.5th 161.

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Compensability under occupational disease statutes of emotional distress or like injury suffered by claimant as result of nonsudden stimuli. 113 A.L.R.5th 115.

Right to workers' compensation for physical injury or illness suffered by claimant as result of nonsudden mental stimuli – Requisites of, and factors affecting, compensability. 13 A.L.R.6th 209.

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82 Am. Jur. 2d, Workers' Compensation §§ 192 et seq.

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§ 71-3-9. Exclusiveness of liability.

(1) Except as provided under subsection (2) of this section, the liability of an employer to pay compensation shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages at common law or otherwise from such employer on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this chapter, or to maintain an action at law for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

(2) An employer shall not be liable under this chapter to a first responder, as defined in Section 25-15-403, if such first responder elects to receive benefits under the "Mississippi First Responders Health and Safety Act."

HISTORY: Codes, 1942, § 6998-05; Laws, 1948, ch. 354, § 5; reenacted without change, Laws, 1982, ch. 473, § 5; reenacted without change, Laws, 1990, ch. 405, § 5, eff from and after July 1, 1990; Laws, 2019, ch. 467, § 6, eff from and after July 1, 2021.

Cross References — Application of this section to actions by and against electric utilities arising out of injuries resulting from contact with high voltage overhead lines, see § 45-15-13.

Mississippi First Responders Health and Safety Act, see § 25-15-401 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Election to sue.
3. Employer-employee relationship.
4. Action against compensation carrier.
5. Action for wrongful death.
6. Third-party action.
7. Willful acts of employer or co-employee.
8. Negligent infliction of emotional distress.
9. Intentional infliction of emotional distress.
10. Immunity extended to co-workers.

1. In general.

Language in the uninsured motorist statute, Miss. Code Ann. § 83-11-101, as well as the insured's UM policy, required that the insured be legally entitled to recover from the owner or operator of the uninsured vehicle; since that insured could not bring a legal action against the co-employee at the time of the accident under Miss. Code Ann. § 71-3-9, he was not entitled to recover UM benefits from his insurer. Steen v. Metro. Prop. & Cas. Ins. Co., 858 So. 2d 186, 2003 Miss. App. LEXIS 991 (Miss. Ct. App. 2003).

Employee's claim against his employer for bad faith failure to pay worker's compensation benefits was not barred by the exclusivity provision in Miss. Code Ann. § 71-3-9 after a settlement of the claim had been approved by the Mississippi Workers' Compensation Commission. Miss. Power & Light Co. v. Cook, 832 So. 2d 474, 2002 Miss. LEXIS 399 (Miss. 2002).

Movie production company was not liable to its purported employees as the actress suing for benefits after she settled with the movie production company on her workers' compensation claim did not show the purported employees were not her co-employees who enjoyed, pursuant to Miss. Code Ann. § 71-3-9, the same immunity the movie production company received once it settled its workers' compensation claim with her. Wingerter v. Bhd. Prods., Inc., 822 So. 2d 300, 2002 Miss. App. LEXIS 8 (Miss. Ct. App. 2002).

Material issue of fact existed as to whether physician was employee of hospital, precluding summary judgment based on exclusivity of Workers' Compensation Act in third party action by hospital against corporation that provided physician, arising out of malpractice claim against physician and hospital brought by patient who was claimed to be hospital employee. Russell v. Orr, 700 So. 2d 619, 1997 Miss. LEXIS 508 (Miss. 1997).

Material issue of fact existed as to whether patient was employee of hospital, precluding summary judgment for physician and hospital on patient's malpractice claim based on exclusivity of Workers' Compensation Act. Russell v. Orr, 700 So. 2d 619, 1997 Miss. LEXIS 508 (Miss. 1997).

Even if physician and patient were employees of hospital, material issue of fact existed as to whether patient sought treatment as member of general public or in course of her employment, precluding summary judgment for physician and hospital on patient's malpractice claim based on co-employee status or exclusivity feature of Workers' Compensation Act. Russell v. Orr, 700 So. 2d 619, 1997 Miss. LEXIS 508 (Miss. 1997).

Prime contractor was statutory employer of sub-subcontractor's employee, and thus, was immune from liability under Workers' Compensation Act's exclusivity of remedy provision in negligence action brought by injured employee, where sub-subcontractor provided compensation coverage to its employees pursuant to its contract with prime contractor. Bradshaw v. Rudder, 227 Miss. 143, 85 So. 2d 778, 1956 Miss. LEXIS 665 (Miss. 1956).

Employees covered for workers' compensation by a temporary employment agency were barred by the exclusive remedy provisions of the Workers' Compensation Act from recovering against the entity for which the services were actually performed. Northern Elec. Co. v. Phillips, 660 So. 2d 1278, 1995 Miss. LEXIS 374 (Miss. 1995).

The existence of a contract for indemnity changes the applicability of the exclusivity provision of the Workers' Compensation Act; the enforcement of an indemnity clause which was freely entered into does not impugn the beneficent purposes of the Act because the employee will still be compensated. Heritage Cablevision v. New Albany Elec. Power Sys., 646 So. 2d 1305, 1994 Miss. LEXIS 599 (Miss. 1994).

It was not necessary to join Mississippi city as "phantom party" defendant in suit by city employee alleging injury as result of corporation's release of certain substances into city sewer system, so that jury could fully apportion fault under § 85-5-7 even though plaintiff could not sue city directly and corporation could not seek contribution from city, as result of mandate of § 71-3-9. Statute did not contain clear command that alleged joint-tortfeasors be joined in such a way. White v. Esmark Apparel, 788 F. Supp. 907, 1992 U.S. Dist. LEXIS 5771 (N.D. Miss. 1992).

Exclusivity provisions of Workers' Compensation Act preclude consortium claim by wife of injured claimant in actions falling within scope of Act. Stevens v. FMC Corp., 515 So. 2d 928, 1987 Miss. LEXIS 2883 (Miss. 1987).

Intent of legislature was that any common-law recovery or settlement was to be credited toward employer's or insurer's liability; liability cannot be imposed on employer under both common-law and Workers' Compensation Act, as entitlement to one excludes other; decedent was either injured while acting in course and scope of employment thereby making employer liable under Worker's Compensation Act, or was injured while not acting in course of employment thereby possibly rendering employer liable under common-law negligence liability; therefore, sums paid in settlement of common-law action against employer and co-employees are to be credited against employer's obligation under Worker's Compensation Act. Sawyer v. Head, 510 So. 2d 472, 1987 Miss. LEXIS 2427 (Miss. 1987).

An electrician who was employed by two companies simultaneously was not entitled to a judgment in an action for personal injuries against one of the companies where he had obtained settlement of a workman's compensation claim against the second company. Ray v. Babcock & Wilcox Co., 388 So. 2d 166, 1980 Miss. LEXIS 2101 (Miss. 1980).

The signing of an application for group insurance benefits is a factor to be considered in determining whether an injury was work connected or arose out of a pre-existing condition, but it is not per se a bar to a claim under the Workmen's Compensation Law where the facts are in dispute. Central Electric & Machinery Co. v. Shelton, 220 So. 2d 320, 1969 Miss. LEXIS 1454 (Miss. 1969).

The requirement that an employer must secure payment of compensation means that he must have in effect an insurance policy complying with the Workmen's Compensation Law, or that he must qualify as a self-insurer. Taylor v. Crosby Forest Products Co., 198 So. 2d 809, 1967 Miss. LEXIS 1271 (Miss. 1967).

Where the employer secured the payment of compensation to his employees by qualifying as a self-insurer, the remedy of an employee arises only under the Workmen's Compensation Law, and that statutory remedy being exclusive, no action at law is available to the employee. Taylor v. Crosby Forest Products Co., 198 So. 2d 809, 1967 Miss. LEXIS 1271 (Miss. 1967).

A claim for disability under the compensation law is not a suit to recover damages growing out of an industrial injury, but is compensation for loss of earnings as a result of an industrial injury, or the loss to the dependents of a worker because of his death. Thyer Mfg. Co. v. Mooney, 252 Miss. 629, 173 So. 2d 652, 1965 Miss. LEXIS 1134 (Miss. 1965).

An employer's liability under the Workmen's Compensation Law is not affected by his failure to obtain insurance. Dependents of Dawson v. Delta Western Exploration Co., 245 Miss. 335, 147 So. 2d 485, 1962 Miss. LEXIS 556 (Miss. 1962).

This section [Code 1942, § 6998-05] deprives the employee of his common-law right of action against the employer for compensatory damages. L. B. Priester & Son, Inc. v. Bynum, 244 Miss. 185, 137 So. 2d 907, 1962 Miss. LEXIS 438 (Miss. 1962).

An employer's purchase of a $5,000 policy on the life of an employee did not release him from liability to the widow and dependents of the employee for benefits they were entitled to under the Workmen's Compensation Law following the death of the employee in the course of employment. Riddell v. Estate of Cagle, 227 Miss. 305, 85 So. 2d 926, 1956 Miss. LEXIS 689 (Miss. 1956).

Immunity to common-law suits is extended to statutory employers who come within the provisions of Code 1942, § 6998-04. Mosley v. Jones, 224 Miss. 725, 80 So. 2d 819, 1955 Miss. LEXIS 535 (Miss. 1955).

2. Election to sue.

Because the court of appeals decided as a matter of law that the employee was acting in the course and scope of his employment when he was injured, that his injuries were not the result of an intentional tort, and that his injuries were compensable under the Mississippi Workers' Compensation Act, the exclusivity provision of the act barred his tort claims against the employer, and the trial court erred when it denied the employer's motion for summary judgment. Hurdle v. Holloway, 848 So. 2d 183, 2003 Miss. LEXIS 293 (Miss. 2003).

Wrongful death action was remanded because there was an arguably reasonable basis that a sub-subcontractor who did not have workers' compensation insurance, but whose employees were covered by a statutory employer, was not entitled to the protection of the Workers' Compensation Act's exclusivity provision, Miss. Code Ann. § 71-3-9, and thus was not fraudulently joined. Culpepper v. Double R, Inc., 269 F. Supp. 2d 739, 2003 U.S. Dist. LEXIS 11513 (S.D. Miss. 2003).

Remand was denied because claims against resident managers for personal injuries from exposure to vinyl chloride were actually negligence claims barred by the exclusivity provision of the Mississippi Workers' Compensation Act, Miss. Code Ann. § 71-3-9, and thus the managers were fraudulently joined. Frye v. Airco, Inc., 269 F. Supp. 2d 743, 2003 U.S. Dist. LEXIS 11530 (S.D. Miss. 2003).

Two elements were necessary for an injured employee to avoid the Mississippi workers' compensation exclusive liability provision: (1) the injury must have been caused by the willful act of another employee acting in the course of employment and in furtherance of the employee's business, and (2) the injury had to be one that was not compensable under the Workers' Compensation Act; where the elements were met, then it was appropriate to pursue a claim outside of the confines of the statute. Lewallen v. Slawson, 822 So. 2d 236, 2002 Miss. LEXIS 92 (Miss. 2002).

Claimant may not collect on tort claim against employer or co-employee if evidence shows he is entitled to worker's compensation benefits arising out of same occurrence, although there is nothing wrong with pursuing both remedies when benefits under both are denied. Sawyer v. Head, 510 So. 2d 472, 1987 Miss. LEXIS 2427 (Miss. 1987).

The Workmen's Compensation Law affords the exclusive remedy as between employers and employees, except that a claimant, if the employer does not secure compensation, may elect to claim benefits under the Law or sue at law, and if the latter course is pursued the negligence of a fellow servant, the assumption of risk, and contributory negligence cannot be interposed as defenses. Riddell v. Estate of Cagle, 227 Miss. 305, 85 So. 2d 926, 1956 Miss. LEXIS 689 (Miss. 1956).

The Workmen's Compensation Law does not make good faith of an employer in attempting to secure compensation insurance the test in determining whether an employee can sue at common law. McCoy v. Cornish, 220 Miss. 577, 71 So. 2d 304, 1954 Miss. LEXIS 474 (Miss. 1954).

When accident happened to an employee, the employer had no compensation insurance and did not apply to the commission for a policy under the assigned risk plan, the employee had a right to bring a common-law action for damages in view of the fact that the employer failed to comply with the Workmen's Compensation Law. McCoy v. Cornish, 220 Miss. 577, 71 So. 2d 304, 1954 Miss. LEXIS 474 (Miss. 1954).

3. Employer-employee relationship.

Company did not waive its exclusive remedy defense because the issue had been at the forefront of the litigation throughout; the company's third-party complaint made clear that the worker's status as an employee or independent contractor was a central issue and its affirmative defense in the case, and the company never abandoned the issue in any sense or actively seek to litigate the underlying merits of the worker's claim. Fortner v. Specialty Contr., LLC, 217 So. 3d 736, 2017 Miss. App. LEXIS 54 (Miss. Ct. App. 2017).

Doctrines of quasi-estoppel and equitable estoppel did not bar a company from denying that a worker was an independent contractor because the worker failed to articulate how he relied to his detriment on any representation by the company to show that it took inconsistent positions and that the company benefitted from any inconsistent position; the company's failure to file a timely notice of the worker's injury did not estop it from raising the exclusive remedy provision as a defense. Fortner v. Specialty Contr., LLC, 217 So. 3d 736, 2017 Miss. App. LEXIS 54 (Miss. Ct. App. 2017).

Circuit court properly granted a company summary judgment in a worker's action alleging it was liable for its employee's negligence because his exclusive remedy was under the Workers' Compensation Law; the nature of the work was that of an employee covered by the Law because the work did not involve any particular skill or training, and the worker was not in the business of offering similar services to other entities as part of his own independent business. Fortner v. Specialty Contr., LLC, 217 So. 3d 736, 2017 Miss. App. LEXIS 54 (Miss. Ct. App. 2017).

Coverage under the Workers' Compensation Law is not limited to employees who work directly with the owner of the business. Fortner v. Specialty Contr., LLC, 217 So. 3d 736, 2017 Miss. App. LEXIS 54 (Miss. Ct. App. 2017).

Worker's exclusive remedy was under the Workers' Compensation Law because pursuant to the "control test," the worker was a company's employee not an independent contractor; the company had the right to control the work and it exercised that right, the worker was paid a regular daily wage rather than a fixed fee for some project or job, and the company provided all necessary tools and could have fired him at any time. Fortner v. Specialty Contr., LLC, 217 So. 3d 736, 2017 Miss. App. LEXIS 54 (Miss. Ct. App. 2017).

Owner of a petroleum refinery plant was not immune from a negligence action filed by a contractor's employee, and thus, it was subject to the employee's tort claim as "any other party," because it was not statutory employer of the employee; the owner had no duty as an employer or contractor to secure workers' compensation insurance, and its act of voluntarily purchasing coverage did not change its status. Thomas v. Chevron U.S.A., Inc., 212 So. 3d 58, 2017 Miss. LEXIS 27 (Miss. 2017).

Because the subcontractor could not be considered an "employee" of the department store company, it was not entitled to tort immunity under the exclusivity provision of the Workers' Compensation Act, Miss. Code Ann. § 71-3-9. The subcontractor was in a much better position than a mere employee to distribute the cost of potential tort liability within the enterprise, as the subcontractor could include in its contract bid a price increase which reflected possible tort liability which would be passed on to the company as a cost of doing business. Durr v. MBS Constr. Corp., 665 F. Supp. 2d 700, 2009 U.S. Dist. LEXIS 84398 (S.D. Miss. 2009).

Because defendant office owner lacked the control over plaintiff worker required to show an employment relationship and merely had a customer relationship with the worker's employer cleaning service, the dual employment and borrowed servant doctrines did not apply and the owner had no immunity under Miss. Code Ann. § 71-3-9 as to the worker's injury. Mims v. Renal Care Group, Inc., 395 F. Supp. 2d 458, 2005 U.S. Dist. LEXIS 36725 (S.D. Miss. 2005).

Trial court's judgment was reversed and rendered to remove the jury's allocation of contributory negligence as the employer conceded on appeal that the individual was an employee, and contributory negligence was not available as a defense under Miss. Code Ann. § 71-3-9 as the employer had not maintained workers' compensation insurance. Renfroe v. Berryhill, 910 So. 2d 624, 2005 Miss. App. LEXIS 154 (Miss. Ct. App. 2005).

Where the decedent's employer agreed under the subcontract with the contractor to provide workers' compensation coverage to the employees, and the employer did so, the contractor was entitled to summary judgment pursuant to Miss. R. Civ. P. 56 in the decedent's heirs' wrongful death action; construing Miss. Code Ann. § 71-3-7, relating to a contractor's obligation to provide workers' compensation coverage, and Miss. Code Ann. § 71-3-9, the workers' compensation exclusivity provision, together, it was determined that where the employer provided compensation coverage to its employees pursuant to the contract with the contractor, the contractor qualified as a statutory employer and was immune from tort liability claims by the heirs. Thornton v. W. E. Blain & Sons, Inc., 878 So. 2d 1082, 2004 Miss. App. LEXIS 715 (Miss. Ct. App. 2004).

Prime contractor was statutory employer of sub-subcontractor's employee, and thus, was immune from liability under Workers' Compensation Act's exclusivity of remedy provision in negligence action brought by injured employee, where sub-subcontractor provided compensation coverage to its employees pursuant to its contract with prime contractor. Bradshaw v. Rudder, 227 Miss. 143, 85 So. 2d 778, 1956 Miss. LEXIS 665 (Miss. 1956).

The defendant was the plaintiff's statutory employer for purposes of the exclusivity provision of the Workers' Compensation Act (§ 71-3-9) where (1) the plaintiff was originally employed by a temporary employment agency, which placed her in the job with the defendant, (2) the defendant controlled the performance of the work, the plaintiff acquiesced in the situation, and the plaintiff's original employer temporarily terminated its relationship with the plaintiff while she worked for the defendant, (3) the defendant furnished the premises and materials necessary for the plaintiff's work, (4) the defendant had a right to discharge the plaintiff, and (5) the plaintiff was paid by her original employer, which passed the costs on to the defendant. Honey v. United Parcel Serv., 879 F. Supp. 615, 1995 U.S. Dist. LEXIS 3307 (S.D. Miss. 1995).

Representatives of deceased employee were not barred by exclusiveness of remedies provision in Miss Code § 71-3-9 from maintaining action against wholly-owned subsidiary of decedent's employer for negligence, where parties presented no evidence suggesting that subsidiary's corporate identity should be disregarded because of fraud or injustice and facts did not present proper question of piercing corporate veil because subsidiary was being sued for its own acts of alleged negligence, and not acts of parent company. Porter v. Beloit Corp., 667 F. Supp. 367, 1987 U.S. Dist. LEXIS 7776 (S.D. Miss. 1987).

Injured employee may not circumvent Workers' Compensation Act on basis of dual capacity doctrine; employer is not liable in tort to injured employee when employer assumes identity separate and apart from role as employer; employer who designs, manufactures or distributes product used by its employees cannot be held liable to injured employee on theory of products liability. Rader v. U.S. Rubber Reclaiming Co., 617 F. Supp. 1045, 1985 U.S. Dist. LEXIS 15521 (S.D. Miss. 1985).

General contractor and subcontractor were entitled to immunity under exclusive remedy provision of workers' compensation statute in negligence action brought against them by employee of sub-subcontractor, where sub-subcontractor had workers' compensation insurance for its injured employees. Crowe v. Brasfield & Gorrie Gen. Contr., 688 So. 2d 752, 1996 Miss. LEXIS 691 (Miss. 1996).

A pipeline operator which contracted with an injured welder's employer for the construction of a pipeline was not immune from tort liability on the ground of the "statutory employer" defense; since the pipeline operator was not a "contractor," and because the employer had secured compensation for the welder's benefit, the Workers' Compensation Act imposed no duty on the pipeline operator and, accordingly, the pipeline operator enjoyed no benefits under the Act. The pipeline operator could not gain tort immunity by assuming compensation obligations which in fact and in law it did not have. Magee v. Transcontinental Gas Pipe Line Corp., 551 So. 2d 182, 1989 Miss. LEXIS 365 (Miss. 1989).

Negligence action by employee of drilling company who was injured when part of drilling rig fell on him, against company which transported rig to drilling site, is precluded by exclusive remedy provision of Mississippi Workers' Compensation Act (§§ 71-3-1 et seq.), since transport company employees were "loaned servants" of drilling company, and since any negligence attributable to transport company employees occurred while they were under supervision of drilling company. Taylor v. Kay Lease Service, Inc., 761 F.2d 1107, 1985 U.S. App. LEXIS 30089 (5th Cir. Miss. 1985).

A convenience store clerk, who was raped in the course of a store robbery, was injured as a consequence of conditions brought about by risks of the work environment, and thus her exclusive remedy was under Miss Code § 71-3-9. Williams v. Munford, Inc., 683 F.2d 938, 1982 U.S. App. LEXIS 16296 (5th Cir. Miss. 1982).

Notwithstanding substantial doubt as to the assertion of the defendant driver that the plaintiff passengers were in his employ at the time of the collision, evidence, including receipt by the plaintiff of substantial compensation benefits, warranted a jury submission on their employment status, which was critical to a determination whether the rights of the plaintiffs were limited by the Workmen's Compensation Law and whether an employer-employee relationship was an absolute bar to their Mississippi damage suit. Dicks v. Cleaver, 433 F.2d 248, 1970 U.S. App. LEXIS 7334 (5th Cir. Miss. 1970).

A defendant who has successfully defended an action for personal injuries, resulting from a beating the plaintiff received from defendant's foreman, on the ground that the relationship of employer-employee existed between defendant and plaintiff, cannot thereafter challenge the applicability of the Workmen's Compensation Law to the plaintiff's claim; provided claim for benefits is timely filed within the time extended by Code 1942, § 6998-18(c) beginning with the date of the order dismissing plaintiff's appeal. Seal v. Industrial Electric, Inc., 395 F.2d 214, 1968 U.S. App. LEXIS 6987 (5th Cir. Miss. 1968).

The exclusive remedy of the plaintiff truck driver for injuries sustained as a consequence of a collision with a truck owned by the defendant gravel pit owner was under the Workmen's Compensation Law, where the plaintiff was employed by a truck owner who had contracted to haul sand and gravel for the gravel pit owner under an oral agreement terminable at will by either party and under which the pit owner determined the time, place, method of loading, the destination of trucks, and the method of furnishing evidence of delivery, and the pit owner and the truck owner both carried workmen's compensation insurance; for an employer-employee relationship existed between the pit owner and the injured truck driver. Stubbs v. Green Bros. Gravel Co., 206 So. 2d 323, 1968 Miss. LEXIS 1562 (Miss. 1968).

The immunity from tort liability conferred by this section [Code 1942, § 6998-05] does not extend to a corporation owned by the owners of the employer corporation and engaged in related activities. Index Drilling Co. v. Williams, 242 Miss. 775, 137 So. 2d 525, 1962 Miss. LEXIS 593 (Miss. 1962).

Immunity from tort liability does not exist in the case of injury to a loaned employee with whom no contract of hire has been made. Index Drilling Co. v. Williams, 242 Miss. 775, 137 So. 2d 525, 1962 Miss. LEXIS 593 (Miss. 1962).

Whether the relation between the mover of oil well drilling equipment and a member of the driller's crew who was injured while lending a hand to the mover in placing equipment was that of master and servant, so as to preclude an action for negligence, held to be for trier of the fact. Clark v. Luther McGill, Inc., 240 Miss. 509, 127 So. 2d 858, 1961 Miss. LEXIS 481 (Miss. 1961).

A solicitor of magazine subscriptions was not precluded by this section [Code 1942, § 6998-05] from bringing an action against her employer for the alleged assault and battery committed upon her by another alleged employee, since under subsection (4) of Code 1942, § 6998-02 [now subsection (d) of Code 1972, § 71-3-3], the solicitor was not an employee. Richards v. Blaine, 234 Miss. 519, 107 So. 2d 101, 1958 Miss. LEXIS 526 (Miss. 1958); Statham v. Blaine, 234 Miss. 649, 107 So. 2d 93, 1959 Miss. LEXIS 575 (Miss. 1959).

4. Action against compensation carrier.

Where an employee asserted an action against a worker's compensation insurer because of the insurer's intentional bad-faith refusal to pay worker's compensation when due, Mississippi law applied because, inter alia, an insurer's intentional bad-faith refusal to pay worker's compensation timely is an independent tort committed by the insurer outside of the scope of the worker's employment and it is legally distinct from and independent of any claims arising under the Mississippi Workers' Compensation Act, and Mississippi had the most significant relationship to the intentional tort suit. Williams v. Liberty Mut. Ins. Co., 741 F.3d 617, 2014 U.S. App. LEXIS 1726 (5th Cir. Miss. 2014).

The statute does not bar a claim by an employee against the employer's insurance carrier for the bad faith refusal to pay workers' compensation benefits. Liberty Mut. Ins. Co. v. McKneely, 2001 Miss. App. LEXIS 157 (Miss. Ct. App. Apr. 17, 2001).

Under Mississippi law, proof of intentional tort is required to circumvent exclusive remedies available under Workers' Compensation Law; allegations sounding in negligence are inadequate. Rogers v. Hartford Accident & Indem. Co., 133 F.3d 309, 1998 U.S. App. LEXIS 442 (5th Cir. Miss. 1998).

Physician who settled with plaintiff during trial of medical malpractice action should not have been mentioned at all in judgment with respect to remaining defendants, though that physician was included in special interrogatories submitted to jury for purposes of determining damages and apportioning fault among defendants, where physician had been dismissed from action via agreed order of dismissal with prejudice. Krieser v. Baptist Mem. Hospital-North Miss., 984 F. Supp. 463, 1997 U.S. Dist. LEXIS 20585 (N.D. Miss. 1997).

Under Mississippi law, nonsettling defendant, which was found 50% liable for patient's death in medical malpractice action, was responsible for $100,000 of $200,000 verdict and was not entitled to credit for $650,000 settlement which plaintiff had reached during trial with another defendant; crediting nonsettling defendant with settlement would undermine intention of jury to hold nonsettling defendant accountable and would violate public policy. Krieser v. Baptist Mem. Hospital-North Miss., 984 F. Supp. 463, 1997 U.S. Dist. LEXIS 20585 (N.D. Miss. 1997).

Exception to exclusivity of Workers Compensation Act remedy has been held to exist in actions by injured employees against carriers for independent intentional torts, but in those cases alleged tortious conduct occurred independent of and subsequent to workplace injury. Stevens v. FMC Corp., 515 So. 2d 928, 1987 Miss. LEXIS 2883 (Miss. 1987).

An employee's action, charging bad faith, malice and an intentional tort in failing to pay compensation for injuries adjudicated to be compensable, could be maintained against a worker's compensation carrier and its agent, notwithstanding the provisions of § 71-3-9. Leathers v. Aetna Casualty & Surety Co., 500 So. 2d 451, 1986 Miss. LEXIS 2886 (Miss. 1986).

The exclusive remedy provision of the Mississippi Worker's Compensation Act does not preclude a claimant's action against an insurance carrier based on the carrier's independent and alleged tortious breach of contract. McCain v. Northwestern Nat'l Ins. Co., 484 So. 2d 1001, 1986 Miss. LEXIS 2388 (Miss. 1986).

Exclusivity provision of Workers' Compensation Act (§ 71-3-9) does not bar action by injured worker against carrier, predicated upon carrier's intentional refusal to pay workers' compensation medical and weekly compensation benefits notwithstanding admitted residual permanent disability. Southern Farm Bureau Casualty Ins. Co. v. Holland, 469 So. 2d 55, 1984 Miss. LEXIS 2054 (Miss. 1984).

5. Action for wrongful death.

Employer waived an exclusivity defense in a wrongful death suit because (1) exclusivity was an affirmative defense, as the defense would have terminated the litigation, and, (2) while the employer raised the defense in an answer, the employer did not raise the defense again until moving for summary judgment after actively participating in the litigation for more than 26 months, and the record suggested no extreme and unusual circumstances justifying the delay in bringing the defense to the court's attention and requesting a hearing. Hanco Corp. v. Goldman, 178 So. 3d 709, 2015 Miss. LEXIS 467 (Miss. 2015).

Record sufficiently evinced that a convenience store owner had secured payment of compensation to its statutory employees as required by the Mississippi Workers' Compensation Act, and was thus immune from the decedent's daughter's wrongful death claim, where the daughter did not dispute that the owner had effective workers' compensation insurance for its employees at the relevant time, the owner had provided notice to the insurance carrier of the death, but the decedent's beneficiaries claimed that he was not an employee. Washington v. Tem's Junior, Inc., 981 So. 2d 1047, 2008 Miss. App. LEXIS 267 (Miss. Ct. App. 2008).

Daughter of decedent, who was killed while hauling logs for a subcontractor, was not entitled to bring a workers' compensation claim, pursuant to Miss. Code Ann. § 71-3-9 because workers' compensation payments were the exclusive remedy, and subcontractor had secured payment of compensation in compliance with Miss. Code Ann. § 71-3-7. Lamar v. Thomas Fowler Trucking, Inc., 956 So. 2d 878, 2007 Miss. LEXIS 279 (Miss. 2007).

Decedent's employer was not entitled to immunity from suit under Miss. Code Ann. § 71-3-7 because it did not indirectly secure workers compensation coverage for its employees by reimbursing a timber company, for whom the employer was a subcontractor, for the workers compensation coverage it obtained for the employer's employees. The court rejected the employer's argument that it was entitled to "down-the-line" immunity because it assumed that it was the legislative intent not to create this immunity. Lamar v. Thomas Fowler Trucking, Inc., 956 So. 2d 911, 2006 Miss. App. LEXIS 249 (Miss. Ct. App. 2006), aff'd, 956 So. 2d 878, 2007 Miss. LEXIS 279 (Miss. 2007).

Employer was properly granted summary judgment in the decedent's daughter's wrongful death action because the daughter had already elected her remedy at the time she filed her lawsuit under Miss. Code Ann. § 71-3-9 by accepting and failing to return the workers compensation benefits paid by the timber company, for whom the employer was a subcontractor. Lamar v. Thomas Fowler Trucking, Inc., 956 So. 2d 911, 2006 Miss. App. LEXIS 249 (Miss. Ct. App. 2006), aff'd, 956 So. 2d 878, 2007 Miss. LEXIS 279 (Miss. 2007).

Assertion by the administrator of an employee's estate that an employer's failure to act for the employee's protection, in the face of information about a co-worker who went on a shooting rampage was an intentional tort so that the exclusivity bar of Mississippi's Workers' Compensation Act was inapplicable found no support in the law; a mere willful and malicious act was insufficient to give rise to the intentional tort exception because there needed to be a finding of an "actual intent to injure" and reckless or grossly negligent conduct was not enough to remove a claim from the exclusivity of the Act. Tanks v. Lockheed-Martin Corp., 332 F. Supp. 2d 953, 2004 U.S. Dist. LEXIS 17123 (S.D. Miss. 2004).

A groundskeeper's aid was not acting within the scope of his employment when he drowned in a swimming pool, and therefore his parents were not barred by the exclusive remedy provisions of the Mississippi Workers' Compensation Act from bringing a wrongful death action on his behalf, where the employee was not required by his job duties to be in the vicinity of the swimming pool, he was supposed to be hoeing grass from a sidewalk outside the fence surrounding the pool at the time he entered the pool area, and the employer had specifically instructed the employee to stay away from the pool because he could not swim. Estate of Brown by Brown v. Pearl River Valley Opportunity, 627 So. 2d 308, 1993 Miss. LEXIS 421 (Miss. 1993).

Mother of decedent was not entitled to bring wrongful death action where decedent was killed when he was struck by car while working on highway project; contention that wrongful death statute controlled over Workers' Compensation provision which provided that it would be exclusive remedy was rejected; argument that because mother was not dependent on decedent, exclusive remedy provision in death benefit cases did not apply was also rejected, because act intended to provide exclusive remedy growing out of employer-employee relationship, and different result would subject employer in many instances to double liability. Estate of Morris v. W. E. Blain & Sons, Inc., 511 So. 2d 945, 1987 Miss. LEXIS 2698 (Miss. 1987).

Under § 71-3-15, neither an employer nor its carrier was liable for the full amount of an insured's medical bill incurred after his arrival in Illinois, where it was not shown that he requested his employer to furnish further medical care, that the employer refused or neglected further medical treatment, or that there was any emergency or any interest of justice established which would excuse the failure to forward to the employer a medical report within 20 days after the first treatment by the Chicago physician. Strickland v. M.H. McMath Gin, Inc., 457 So. 2d 925, 1984 Miss. LEXIS 1929 (Miss. 1984).

The survivors of a deceased worker who died by suffocation in a soybean bin while in the course of his employment were barred by the Workmen's Compensation Act from maintaining a wrongful death action against the employer's general manager, whose alleged negligence had contributed to the employee's death; an officer or agent of a corporation who is acting within the scope of his authority for and on behalf of the corporation comes within the purview of the act and is entitled to the immunity it provides. Thus, the survivors' exclusive remedy was workmen's compensation. Brown v. Estess, 374 So. 2d 241, 1979 Miss. LEXIS 2342 (Miss. 1979).

A wrongful death action was properly dismissed as against certain of decedent's fellow employees where the decedent was covered by the Workmen's Compensation Act; as to decedent's employer and its insurer, the trial court erred in not granting their demurrers and motions to dismiss where the employer, under § 71-3-9, was not subject to suit and where the declaration, which only sought to have the insurer assert any claim it might have, did not state a cause of action against the insurer; the trial court also erred in setting a thirty day time limit within which the employer and its insurer were required to exercise their option to intervene in the suit as party plaintiffs based on their having paid benefits to decedent's widow. McCluskey v. Thompson, 363 So. 2d 256, 1978 Miss. LEXIS 2183 (Miss. 1978).

Where an employee, paid by a pipeline contractor, was also an employee of the pipeline owner and of the company in charge of the engineering and construction of a project as the agent for the owner at the time of the employee's accidental death, the Workmen's Compensation Law provided the exclusive remedy for his heirs and dependents, who could not then maintain a wrongful death action in tort against the owner or the engineering company. Biggart v. Texas Eastern Transmission Corp., 235 So. 2d 443, 1970 Miss. LEXIS 1444 (Miss. 1970).

Where the administratrix had made an election to sue for the death of her decedent under Code 1942, § 1453, the mere reference to the Workmen's Compensation Law did not serve to convert the case to one based upon tort and the Law, so that the next of kin and beneficiaries would become necessary and indispensable parties, and the federal court was not deprived of jurisdiction based upon diversity of citizenship on the theory that such beneficiaries and indispensable parties were citizens of the same state as the defendant. Hordge v. Yeates, 157 F. Supp. 411, 1957 U.S. Dist. LEXIS 2520 (D. Miss. 1957).

Where an amendment to the statute provided that if employer fails to secure the payment of workmen's compensation, the employee or the legal representative has the choice between claiming compensation or suing at law for damages and in that event, neither negligence of fellow servant, assumption of risk, nor contributory negligence can be pleaded, this amendment did not repeal the Workmen's Compensation Law and reinstate the right to maintain an action for wrongful death of an employee as in existence prior to the original enactment of the statute.

Allen v. R. G. Le Tourneau, Inc., 220 Miss. 520, 71 So. 2d 447, 1954 Miss. LEXIS 465 (Miss. 1954).

6. Third-party action.

As under Miss. Code Ann. § 71-3-9, the insured was not "legally entitled to recover" any damages from his employer or the co-employee who injured him in an auto accident, and he was not entitled under Miss. Code Ann. § 83-11-101(1) to recover uninsured motorist benefits from his private insurer for this accident. Wachtler v. State Farm Mut. Auto. Ins. Co., 835 So. 2d 23, 2003 Miss. LEXIS 14 (Miss. 2003).

Where a subcontractor has fewer than the number of employees required by Miss. Code § 71-3-9 to be liable for workmen's compensation payments to the employee, the general contractor will be liable for workmen's compensation payments but has immunity from tort suit brought by an employee of the exempt subcontractor. Nations v. Sun Oil Co., 695 F.2d 933, 1983 U.S. App. LEXIS 31214 (5th Cir. Miss.), cert. denied, 464 U.S. 893, 104 S. Ct. 239, 78 L. Ed. 2d 229, 1983 U.S. LEXIS 1812 (U.S. 1983).

Defendant in action by city employee for injuries sustained in car accident while employee was on duty cannot maintain third-party action against city for contribution under former Miss Code Anno § 85-5-5, as employee may not recover in tort against his employer due to exclusivity provisions of § 71-3-9. McClellan v. Poole, 692 F. Supp. 687, 1988 U.S. Dist. LEXIS 9011 (S.D. Miss. 1988).

The existence of an express indemnity agreement between a cable television company which employed the claimant and a telephone company whose telephone pole broke causing the claimant to fall to the ground and become seriously injured while in the course of his employment, took the telephone company's action for indemnification against the employer outside the prohibition of Miss Code § 71-3-9. Lorenzen v. South Cent. Bell Tel. Co., 546 F. Supp. 694, 1982 U.S. Dist. LEXIS 15636 (S.D. Miss. 1982), aff'd, 701 F.2d 408, 1983 U.S. App. LEXIS 29323 (5th Cir. Miss. 1983).

Exclusive remedy provisions of Workers' Compensation Act preclude action by wife of injured employee for loss of consortium. West v. Plastifax, Inc., 505 So. 2d 1026, 1987 Miss. LEXIS 2497 (Miss. 1987).

Requirement that contractor assure worker's compensation coverage for employees of subcontractor does not entitle contractor to defense under exclusiveness of liability statute (§ 71-3-9) where subcontractor has in fact obtained coverage. Nash v. Damson Oil Corp., 480 So. 2d 1095, 1985 Miss. LEXIS 2305 (Miss. 1985).

Third party oil well owner which has been held liable to an employee of oil well contractor may not receive indemnity from the employer-contractor on a tort theory. Smith Petroleum Service, Inc. v. Monsanto Chemical Co., 420 F.2d 1103, 1970 U.S. App. LEXIS 11327 (5th Cir. Miss. 1970).

The employee of an agent, operating a car rental business on behalf of his principal, is also the employee of the principal and could not, after receiving compensation benefits, maintain a third-party action against the principal. Robertson v. Stroup, 254 Miss. 118, 180 So. 2d 617, 1965 Miss. LEXIS 934 (Miss. 1965).

7. Willful acts of employer or co-employee.

Plaintiffs' claim that their former employer battered them when it failed to remediate toxic mold, which they later inhaled, and by spraying the mold with a substance that injured them, was barred by workers' compensation exclusivity because 1) they did not assert that the employer acted with actual intent to batter and injure them; and 2) the employer could not allow the mold to exist with the intent of injuring them while at the same time attempting to destroy the mold. Bowden v. Young, 120 So. 3d 971, 2013 Miss. LEXIS 459 (Miss. 2013).

Given the considerable amount of testimony offered by the employees and the management personnel regarding the employer's refusal to install an appropriate ventilation system on the glue line despite its knowledge of the harmful effects of the neurotoxin contained in the adhesive the intentional tort exception under Miss. Code Ann. § 71-3-9 to the Mississippi

Workers' Compensation Act. Miss. Code Ann. § 71-3-1 et seq., clearly applied. Franklin Corp. v. Tedford, 18 So. 3d 215, 2009 Miss. LEXIS 426 (Miss. 2009).

In a widow's bad-faith action against a workers' compensation insurance carrier, the carrier's conduct was the equivalent of an unreasonably delayed investigation that had no legitimate or arguable reason. Thus, the jury could have found that the carrier's habitually delayed "investigation" involving intentional choices to pass along duties was in reckless disregard of the consequences that the widow faced based on the carrier's failure to resolve her lump-sum order. AmFed Cos., LLC v. Jordan, 34 So. 3d 1177, 2009 Miss. App. LEXIS 557 (Miss. Ct. App. 2009).

Where the employees' injuries arose out of and in the course of employment, under Miss. Code Ann. § 71-3-3(b), their claims of battery and intentional infliction of emotional distress against the employer were not precluded by the Mississippi Workers' Compensation Act, Miss. Code Ann. § 71-3-9, as a matter of law. Franklin Corp. v. Tedford, 2009 Miss. LEXIS 169 (Miss. Apr. 16, 2009), sub. op., 18 So. 3d 215, 2009 Miss. LEXIS 426 (Miss. 2009).

Employee's claim that her former employer acted in bad faith in denying workers' compensation benefits under Miss. Code Ann. § 71-3-7, which benefits the employee later received via a settlement, failed because the employer had arguable reasons for its decision where an investigation into whether the employee's alleged sexual relationship with her manager ever occurred or was cause of the employee's mental health problems was inconclusive; that the employer stated in an earlier suit filed by the employee that her negligence claims were barred under the exclusive remedy provisions of Miss. Code Ann. § 71-3-9 did not mean that the employer acted in bad faith by advancing inconsistent positions, as the employer never conceded that the employee had a viable workers' compensation claim. Hood v. Sears Roebuck & Co., 532 F. Supp. 2d 795, 2005 U.S. Dist. LEXIS 46216 (S.D. Miss. 2005), aff'd, 247 Fed. Appx. 531, 2007 U.S. App. LEXIS 21978 (5th Cir. Miss. 2007).

As an employee's complaint against his employer sounded in negligence, and Mississippi had the "most significant relationship" with the action, Mississippi, not Alabama, law applied. Therefore, the employer was immune from suit under Miss. Code Ann. § 71-3-9, as there was no evidence that the employee's injury was caused by its willful actions or that the injury was not compensable under the Mississippi Workers' Compensation Act. Powe v. Roy Anderson Constr. Co., 910 So. 2d 1197, 2005 Miss. App. LEXIS 603 (Miss. Ct. App. 2005).

Employer's motion for summary judgment was denied because the court could find no argument under the present state of the law for dismissing a wrongful death action, arising out of a co-worker's shooting rampage, based on the exclusivity bar provision under Miss. Code Ann. § 71-3-9 of Mississippi's Workers' Compensation Act; there was nothing to suggest that, at the time of the shootings at the plant, the assailant was acting in the course and scope of his employment and in furtherance of his employer's business, or that his actions, which were certainly outside the course and scope of his employment, were directed against his victims because of their employment, and thus, the injury was not compensable under the Act, and the exclusivity bar did not apply. Tanks v. Lockheed-Martin Corp., 332 F. Supp. 2d 953, 2004 U.S. Dist. LEXIS 17123 (S.D. Miss. 2004).

Where a widow whose husband died while working for a general contractor sued the contractor based on its alleged failure to properly repair damaged bolts, the trial court properly granted summary judgment to the contractor as its conduct was at most gross negligence or reckless indifference, which, as a matter of law, did not defeat the exclusivity provision of the workers' compensation statutes. Bevis v. Linkous Constr. Co., 856 So. 2d 535, 2003 Miss. App. LEXIS 445, 2003 Miss. App. LEXIS 773 (Miss. Ct. App. 2003).

Although the employee had received workers' compensation medical benefits, this did not preclude compensation for damages that were not compensable under the Workers' Compensation Act because they were alleged to have been caused by wilful and intentional acts; the damages stemming from the assault and battery were not compensable because they stemmed from a wilful and intentional act, not a negligent or grossly negligent act. Davis v. Pioneer Inc., 834 So. 2d 739, 2003 Miss. App. LEXIS 2 (Miss. Ct. App. 2003).

Nothing in workers' compensation act made recovery for intentional torts and compensation benefits mutually exclusive and, to the contrary, it was never the intention of the act to bar an employee from pursuing a common law remedy for an injury that was the result of a willful and malicious act of a co-employee. Davis v. Pioneer Inc., 2002 Miss. App. LEXIS 407 (Miss. Ct. App. July 16, 2002).

Where employee is injured in course of employment and seeks treatment from co-employee which aggravates injury, but employee can demonstrate that separate treatment was sought in plaintiff's capacity as member of general public, then any common law cause of action which arises as result of that treatment will not be excluded by exclusivity provisions of Workers' Compensation Act. Russell v. Orr, 700 So. 2d 619, 1997 Miss. LEXIS 508 (Miss. 1997).

Where employee is injured in course of employment and seeks treatment from co-employee which aggravates injury, question of fact arises as to whether sufficient nexus exists between plaintiff's status as employee and treatment sought for injury that would bring claim under Workers' Compensation Act exclusivity provisions. Russell v. Orr, 700 So. 2d 619, 1997 Miss. LEXIS 508 (Miss. 1997).

A mere willful and malicious act is insufficient to give rise to the intentional tort exception under the Workers' Compensation Act; thus, a workers' compensation claim would not be removed as an "intentional tort" from the exclusivity of the Act where the employer's conduct was merely "reckless, negligent, or grossly negligent," and there was no evidence that the employer acted "with actual intent to injure." Peaster v. David New Drilling Co., 642 So. 2d 344, 1994 Miss. LEXIS 242 (Miss. 1994).

In order for an injured employee to avoid the Mississippi workers' compensation exclusive liability provision, the injury must have been caused by the wilful act of another employee acting in the course of employment and in the furtherance of the employee's business, and the injury must be one that is not compensable under the act. Griffin v. Futorian Corp., 533 So. 2d 461, 1988 Miss. LEXIS 520 (Miss. 1988).

Claimant's exclusive remedy was benefits for accidental injury arising out of and in scope of employment under Mississippi Workers' Compensation Act; claimant was therefore barred from pursuing common-law tort remedy, where claimant had not presented credible evidence in support of claim of intentional tort by contending that employer intentionally directed its employees to misuse products in complete disregard to warning labels affixed thereto; employer pointed out that claimant stated that employer "negligently" failed to provide him with safe tools and thus his injuries proximately resulted from employer's "negligence." Stevens v. FMC Corp., 515 So. 2d 928, 1987 Miss. LEXIS 2883 (Miss. 1987).

Store manager's husband, a store employee working in a service and maintenance capacity, who initiated a criminal embezzlement charge against the store cashier was an employee and not a third person within § 71-3-3(b), and the store cashier's malicious prosecution action predicated on husband's action was not precluded by the Worker's Compensation Act. Royal Oil Co. v. Wells, 500 So. 2d 439, 1986 Miss. LEXIS 2565 (Miss. 1986).

Malicious prosecution is an intentional tort, and an action for malicious prosecution is within those rights of action an employee may maintain against his or her employer consistent with the Worker's Compensation Act. Royal Oil Co. v. Wells, 500 So. 2d 439, 1986 Miss. LEXIS 2565 (Miss. 1986).

Exception to exclusivity principle exists where injury is caused by willful act of another employee acting in furtherance of employment and in furtherance of employer's business and injury is one which is not compensable under Workers' Compensation Act; derrick hand who suffered injury in fall from drilling rig is limited to workers' compensation remedy since fall is type of injury contemplated by statute, even though employee alleged that safety belts were not available. Mullins v. Biglane Operating Co., 778 F.2d 277, 1985 U.S. App. LEXIS 25427 (5th Cir. Miss. 1985).

Exclusivity provision of § 71-3-9 does not bar court action by employee against employer based upon employer's intentional, bad faith refusal to comply with duty to pay compensation. Luckett v. Mississippi Wood, Inc., 481 So. 2d 288, 1985 Miss. LEXIS 2425 (Miss. 1985).

Under §§ 71-3-9 and 71-3-3(b), an employee's claim for damages resulting from false imprisonment by her employer was not barred by the exclusivity of the remedies available under the Workmen's Compensation Act, since the Act governs only injuries compensable under it, since injuries sustained as the result of a false imprisonment are not the result of accident, but rather arise from a willful act, which injuries are compensable under the Act only if caused by the willful act of a third person, and since the term "third person" refers either to a stranger to the employer-employee relationship, or to a fellow employee acting outside the course and scope of his employment; thus, a declaration alleging that an employee was falsely imprisoned by the head of her employer's security department, and questioned concerning an amount of money missing from her department, was improperly dismissed. Miller v. McRae's, Inc., 444 So. 2d 368, 1984 Miss. LEXIS 1577 (Miss. 1984).

8. Negligent infliction of emotional distress.

Employee could not assert a negligent infliction of emotional distress claim against an employer for firing the employee because workers' compensation was the employee's exclusive remedy. Petty v. Baptist Mem. Health Care Corp., 190 So. 3d 17, 2015 Miss. App. LEXIS 639 (Miss. Ct. App. 2015), cert. dismissed, 2016 Miss. LEXIS 175 (Miss. Apr. 28, 2016).

Because a former nurse, who was an at-will employee at a hospital, claimed that the hospital was liable to the nurse for negligent infliction of emotional distress arising from the hospital's termination of the nurse, the nurse could not maintain an action against the hospital for negligent infliction of emotional distress. Petty v. Baptist Mem. Health Care Corp. Baptist Mem, 2015 Miss. App. LEXIS 122 (Miss. Ct. App. Mar. 10, 2015), op. withdrawn, 2015 Miss. App. LEXIS 658 (Miss. Ct. App. Dec. 8, 2015).

Mississippi Workers' Compensation statutes provided an exclusive remedy for negligence claims by employees against their employers. Miss. Code Ann. § 71-3-1. Therefore, the employee's negligent infliction of emotional distress claim was barred by Mississippi Workers' Compensation law. Claiborne v. Miss. Bd. of Pharm., 2011 U.S. Dist. LEXIS 93849 (S.D. Miss. Aug. 22, 2011).

Fast-food worker's state law claims for negligence per se and negligent infliction of emotional distress, alleged in conjunction with federal race discrimination and retaliatory discharge claims under Title VII, were barred by the exclusivity provision of the Mississippi Workers' Compensation statute. Means v. B & G Food Enters., 2006 U.S. Dist. LEXIS 65835 (S.D. Miss. Sept. 13, 2006).

A claim for the negligent infliction of emotional distress against an employer is barred by this section. Disney v. Horton, 2000 U.S. Dist. LEXIS 5359 (N.D. Miss. Apr. 13, 2000).

9. Intentional infliction of emotional distress.

Plaintiffs' intentional infliction of emotional distress claim against their former employer was barred by workers' compensation exclusivity, because the employer's initial denial that there was toxic mold in the building did not rise to the level of outrageous and extreme conduct, especially in view of its later actions to remediate the mold. Bowden v. Young, 120 So. 3d 971, 2013 Miss. LEXIS 459 (Miss. 2013).

10. Immunity extended to co-workers.

Trial court erred in denying defendants' motion for a change of venue in the injured motorist's action because the motorist's co-worker was fraudulently joined as a defendant to obtain venue in Smith County. The motorist's exclusive remedy against the co-worker was for workers' compensation benefits as provided under Miss. Code Ann. § 71-3-9, which extended immunity to co-workers as well as employers. Christian v. McDonald, 907 So. 2d 286, 2005 Miss. LEXIS 115 (Miss. 2005).

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Miss. Code Section 71-3-9 provides that liability of employer to pay compensation "shall be exclusive and in place of all other liability of such employer to the employee"; compensation referred to is workers' compensation benefits which are generally two-thirds of employee's average wage and payment for medical services and supplies. Michael, Mar. 19, 1993, A.G. Op. #93-0145.

Employee may elect to receive sick pay which is earned based upon past service at same time he is receiving workers' compensation benefits. Trosclair, Feb. 24, 1994, A.G. Op. #94-0062.

The Board of Trustees of the Pearl River County Library System may terminate an employee who is receiving worker's compensation benefits, and payment of a regular salary to an employee who is off work due to a job-related injury after their sick leave and personal leave have been exhausted constitutes an unauthorized donation. Tufaro, July 18, 1997, A.G. Op. #97-0415.

RESEARCH REFERENCES

ALR.

Tort liability of worker's compensation insurer for wrongful delay or refusal to make payments due. 8 A.L.R.4th 902.

Employer's tort liability to worker for concealing workplace hazard or nature or extent of injury. 9 A.L.R.4th 778.

Workmen's Compensation Act as furnishing exclusive remedy for employee injured by product manufactured, sold, or distributed by employer. 9 A.L.R.4th 873.

Liability of employer with regard to inherently dangerous work for injuries to employees of independent contractor. 34 A.L.R.4th 914.

Workers' compensation: liability of successive employers for disease or condition allegedly attributable to successive employments. 34 A.L.R.4th 958.

Third-party tortfeasor's right to have damages recovered by employee reduced by amount of employee's workers' compensation benefits. 43 A.L.R.4th 849.

Workers' compensation law as precluding employee's suit against employer for third person's criminal attack. 49 A.L.R.4th 926.

Workers' compensation act as precluding tort action for injury to or death of employee's unborn child. 55 A.L.R.4th 792.

Willful, wanton, or reckless conduct of coemployee as ground of liability despite bar of workers' compensation law. 57 A.L.R.4th 888.

"Dual Capacity Doctrine" as basis for employee's recovery for medical malpractice from company medical personnel. 73 A.L.R.4th 115.

Workers' compensation: effect of allegation that injury was caused by, or occurred during course of, worker's illegal conduct. 73 A.L.R.4th 270.

Workers' compensation: third-party tort liability of corporate officer to injured workers. 76 A.L.R.4th 365.

Workers' compensation statute as barring illegally employed minor's tort action. 77 A.L.R.4th 844.

Breach of assumed duty to inspect property as ground for liability to third party. 13 A.L.R.5th 289.

Presumption or inference that accidental death of employee engaged in occupation of manufacturing or processing arose out of and in course of employment. 47 A.L.R.5th 801.

Workers' compensation as precluding employee's suit against employer for sexual harassment in the workplace. 51 A.L.R.5th 163.

Violation of employment rule as barring claim for workers' compensation. 61 A.L.R.5th 375.

Contractual waiver of exclusivity of workers' compensation remedy. 117 A.L.R.5th 441.

Postaccident conduct by employer, employer's insurer, or employer's employees in relation to workers' compensation claim as waiving, or estopping employer from asserting, exclusivity otherwise afforded by workers' compensation statute. 120 A.L.R.5th 513.

Federal Employees' Compensation Act (5 USCS §§ 8101 et seq.) as affecting recovery under Federal Tort Claims Act. 43 A.L.R. Fed. 424.

Right of injured employee entitled to compensation under Longshoremen's and Harbor Workers' Compensation Act (33 USCS §§ 901 et seq.) to recover from employer's insurance carrier for its negligence. 43 A.L.R. Fed. 695.

Am. Jur.

82 Am. Jur. 2d, Workers' Compensation §§ 40, 41.

25 Am. Jur. Pl & Pr Forms (Rev), Workmen's Compensation, Forms 85, 91.

CJS.

99 C.J.S., Workmen's Compensation §§ 158-1591, 1593-1596 et seq.

Law Reviews.

1978 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 11.

1979 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 699.

1981 Mississippi Supreme Court Review: Administrative Law. 52 Miss. L. J. 377, June 1982.

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§ 71-3-11. Waiting period.

No compensation except medical benefits shall be allowed for the first five (5) days of the disability. In case the injury results in disability of fourteen (14) days or more, the compensation shall be allowed from the date of disability.

HISTORY: Codes, 1942, § 6998-06; Laws, 1948, ch. 354, § 6a; Laws, 1950, ch. 412, § 4; Laws, 1958, ch. 454, § 2; reenacted without change, Laws, 1982, ch. 473, § 6; reenacted without change, Laws, 1990, ch. 405, § 6, eff from and after July 1, 1990.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Miscellaneous.

1. In general.

In an action on a claim for workmen's compensation benefits, it was for the commission, based on the medical and lay testimony, to determine not only whether the bulge or herniated disc and the resultant disability arose out of and in the course of the claimant's employment, but also to determine, if allowable, when compensability should begin. Central Electric & Machinery Co. v. Shelton, 220 So. 2d 320, 1969 Miss. LEXIS 1454 (Miss. 1969).

2. Miscellaneous.

Award of disability benefits to the employee was improper because the employee's claim was barred by the two-year statute of limitations set forth in Miss. Code Ann. § 71-3-35(1); it was possible for the employer to dispute compensability yet provide medical treatment without waiving the statute of limitations. Even if it could have been inferred that the employer's intent behind payments to the employee was in lieu of compensation, those four days did not satisfy the five-day waiting period that was required in Miss. Code Ann. § 71-3-11. Lindsay Logging, Inc. v. Watson, 44 So. 3d 388, 2010 Miss. App. LEXIS 120 (Miss. Ct. App.), cert. denied, 49 So. 3d 106, 2010 Miss. LEXIS 495 (Miss. 2010).

Even if it could have been inferred that the employer's intent behind payments to the employee was in lieu of compensation, the fact that employer paid claimant for four of his eleven total days of absence over a twenty-five month period did not satisfy the five-day waiting period that was required in Miss. Code Ann. § 71-3-11. Lindsay Logging, Inc. v. Watson, 44 So. 3d 388, 2010 Miss. App. LEXIS 120 (Miss. Ct. App.), cert. denied, 49 So. 3d 106, 2010 Miss. LEXIS 495 (Miss. 2010).

Employer and its carrier were not equitably estopped from asserting a statute of limitations defense for a workers' compensation claim because under Miss. Code Ann. §§ 71-3-67(1) and 71-3-11, the employer was not required to file a first notice of injury in that it had no reason to conclude that the claimant suffered a compensable injury in that the claimant had attributed his back pain to a prior back injury that was not work-related. Bynum v. Anderson Tully Lumber Co., 996 So. 2d 814, 2008 Miss. App. LEXIS 702 (Miss. Ct. App. 2008).

RESEARCH REFERENCES

Am. Jur.
82 Am. Jur. 2d, Workers' Compensation § 405.

CJS.
99 C.J.S., Workmen's Compensation §§ 561, 562, 564-566.

§ 71-3-13. Maximum and minimum recovery.

(1) Compensation for disability or in death cases shall not exceed sixty-six and two-thirds percent (66-⅔%) of the average weekly wage for the state per week, nor shall it be less than Twenty-five Dollars ($25.00) per week except in partial dependency cases and in partial disability cases.

(2) Maximum recovery: The total recovery of compensation hereunder, exclusive of medical payments under Section 71-3-15, arising from the injury to an employee or the death of an employee, or any combination of such injury or death, shall not exceed the multiple of four hundred fifty (450) weeks times sixty-six and two-thirds percent (66-⅔%) of the average weekly wage for the state.

HISTORY: Codes, 1942, § 6998-07; Laws, 1948, ch. 354, § 6b; Laws, 1950, ch. 412, § 4; Laws, 1958, ch. 454, § 2; Laws, 1960, ch. 279; Laws, 1968, ch. 559, § 4; Laws, 1972, ch. 522, § 2; Laws, 1976, ch. 459, § 1; Laws, 1979, ch. 442, § 1; Laws, 1981, ch. 341, § 1; reenacted, Laws, 1982, ch. 473, § 7; Laws, 1984, ch. 402, § 1; Laws, 1988, ch. 446, § 2; reenacted without change, Laws, 1990, ch. 405, § 7; Laws, 1992, ch. 577, § 2, eff from and after passage (approved May 15, 1992).

Editor's Notes — Laws of 1988, ch. 446, § 6, provides as follows:
"SECTION 6. This act shall take effect and be in force from and after July 1, 1988; provided, however, the increase in benefits allowed under this act shall apply only to claims arising on or after July 1, 1988."

Cross References — Compensation for disability, see § 71-3-17.
Determination of wages, see § 71-3-31.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Partial disability cases.
3. Partial dependency cases.

1. In general.

The increased benefits allowed under the 1972 amendment to this section apply only to claims arising on or after July 1, 1972, and the circuit court erred in ordering payments of $56 per week to a claimant whose injury occurred prior to that date. Stuart Mfg. Co. v. Walker, 313 So. 2d 574, 1975 Miss. LEXIS 1676 (Miss. 1975).

The interpretation to be placed on the language used in this section [Code 1942, § 6998-07] is that the total amount of weekly benefits to be paid by the employer in totally dependent cases, regardless of the number of dependents, shall not be less than $10 per week. Truck Trailer Sales & Service Co. v. Moore, 244 Miss. 317, 141 So. 2d 541, 1962 Miss. LEXIS 451 (Miss. 1962).

Where a claimant began work 4 weeks preceding the date of injury and had worked 3 days the 1st week, 2 days during the 2d week, and 3 days during each of the next 2 weeks and her total earnings amounted to $51.28, she should have been awarded compensation in the amount of $10 per week rather than an award based on an average weekly wage of $25. Pepper v. Barrett, 225 Miss. 30, 82 So. 2d 580, 1955 Miss. LEXIS 555 (Miss. 1955).

2. Partial disability cases.

Employee's permanent-partial disability compensation period for two injuries that arose from a workplace accident was properly limited to 450 weeks in order to avoid the pyramiding of benefits, as the 450-week award for his body-as-a-whole injury would have still been running when the 200-week award for his shoulder injury would have started to run. Tucker v. Bellsouth Telcoms., Inc., 130 So. 3d 96, 2013 Miss. App. LEXIS 357 (Miss. Ct. App. 2013), cert. denied, 131 So. 3d 577, 2014 Miss. LEXIS 48 (Miss. 2014).

The minimum payment of $25 per week provided in § 71-3-13 may not be reduced by the apportionment provided in § 71-3-7 except in partial dependency cases. Thus, a partially disabled employee was entitled to weekly payments of $25 rather than $12.50, even though her permanent partial disability was due 50 percent to her work-related injury and 50 percent to a preexisting condition. Cross Mfg., Inc. v. Lowery, 394 So. 2d 887, 1981 Miss. LEXIS 1940 (Miss. 1981).

This section [Code 1942, § 6998-07] applies to an award for permanent partial disability. Wiygul Motor Co. v. Pate, 237 Miss. 325, 115 So. 2d 51, 1959 Miss. LEXIS 392 (Miss. 1959).

Order of attorney-referee and the commission finding that claimant's loss of wage earning capacity was $6 per week, and awarding claimant compensation for permanent partial disability at rate of $4 per week, was reversed and judgment entered in supreme court amending the findings so as to show the claimant's loss of earning capacity at $17.50 per week, and awarding compensation to the claimant for permanent partial disability at the rate of 66 and ⅔ per cent of that amount. Hale v. General Box Mfg. Co., 235 Miss. 301, 108 So. 2d 844, 1959 Miss. LEXIS 430 (Miss. 1959).

3. Partial dependency cases.

The 1950 amendment to this section [Code 1942, § 6998-07] providing for a minimum weekly compensation of $10.00 "except in partial dependency cases," permits the payment to a dependent under Code 1942, § 6998-13 of an amount less than the minimum, (a) where his statutory compensation is less than that amount, and (b) where such dependent is partially and not wholly dependent on the deceased employee; if he is wholly dependent, then the $10.00 applies. Bradshaw v. Rudder, 227 Miss. 143, 85 So. 2d 778, 1956 Miss. LEXIS 665 (Miss. 1956).

RESEARCH REFERENCES

ALR.
Workers' compensation: bonus as factor in determining amount of compensation. 84 A.L.R.4th 1055.

Am. Jur.
82 Am. Jur. 2d, Workers' Compensation §§ 338, 384.

7 Am. Jur. Proof of Facts 3d 143, Workers' Compensation for Attendant Care Services by Family Members.

CJS.
99 C.J.S., Workers' Compensation §§ 561, 562, 564-566, 598, 601.

§ 71-3-15. Medical services and supplies.

(1) The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, artificial members, and other apparatus for such period as the nature of the injury or the process of recovery may require. The injured employee shall have the right to accept the services furnished by the employer or, in his discretion, to select one (1) competent physician of his choosing and such other specialists to whom he is referred by his chosen physician to administer medical treatment. Referrals by the chosen physician shall be limited to one (1) physician within a specialty or subspecialty area. Except in an emergency requiring immediate medical attention, any additional selection of physicians by the injured employee or further referrals must be approved by the employer, if self-insured, or the carrier prior to obtaining the services of the physician at the expense of the employer or carrier. If denied, the injured employee may apply to the commission for approval of the additional selection or referral, and if the commission determines that such request is reasonable, the employee may be authorized to obtain such treatment at the expense of the employer or carrier. Approval by the employer or carrier does not require approval by the commission. A physician to whom the employee is referred by his employer shall not constitute the employee's selection, unless the employee, in writing, accepts the employer's referral as his own selection. However, if the employee is treated for his alleged work-related injury or occupational disease by a physician for six (6) months or longer, or if the employee has surgery for the alleged work-related injury or occupational disease performed by a physician, then that physician shall be deemed the employee's selection. Should the employer desire, he may have the employee examined by a physician other than of the employee's choosing for the purpose of evaluating temporary or permanent disability or medical treatment being rendered under such reasonable terms and conditions as may be prescribed by the commission. If at any time during such period the employee unreasonably refuses to submit to medical or surgical treatment, the commission shall, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation shall be paid at any time during the period of such suspension; provided, that no claim for medical or surgical treatment shall be valid and enforceable, as against such employer, unless within twenty (20) days following the first treatment the physician or provider giving such

treatment shall furnish to the employer, if self-insured, or its carrier, a preliminary report of such injury and treatment, on a form or in a format approved by the commission. Subsequent reports of such injury and treatment must be submitted at least every thirty (30) days thereafter until such time as a final report shall have been made. Reports which are required to be filed hereunder shall be furnished by the medical provider to the employer or carrier, and it shall be the responsibility of the employer or carrier receiving such reports to promptly furnish copies to the commission. The commission may, in its discretion, excuse the failure to furnish such reports within the time prescribed herein if it finds good cause to do so, and may, upon request of any party in interest, order or direct the employer or carrier to pay the reasonable value of medical services rendered to the employee.

(2) Whenever in the opinion of the commission a physician has not correctly estimated the degree of permanent disability or the extent of the temporary disability of an injured employee, the commission shall have the power to cause such employee to be examined by a physician selected by the commission, and to obtain from such physician a report containing his estimate of such disabilities. The commission shall have the power in its discretion to charge the cost of such examination to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk.

(3) In carrying out this section, the commission shall establish an appropriate medical provider fee schedule, medical cost containment system and utilization review which incorporates one or more medical review panels to determine the reasonableness of charges and the necessity for the services, and limitations on fees to be charged by medical providers for testimony and copying or completion of records and reports and other provisions which, at the discretion of the commission, are necessary to encompass a complete medical cost containment program. The commission may contract with a private organization or organizations to establish and implement such a medical cost containment system and fee schedule with the cost for administering such a system to be paid out of the administrative expense fund as provided in this chapter. All fees and other charges for such treatment or service shall be limited to such charges as prevail in the same community for similar treatment and shall be subject to regulation by the commission. No medical bill shall be paid to any doctor until all forms and reports required by the commission have been filed. Any employee receiving treatment or service under the provisions of this chapter may not be held responsible for any charge for such treatment or service, and no doctor, hospital or other recognized medical provider shall attempt to bill, charge or otherwise collect from the employee any amount greater than or in excess of the amount paid by the employer, if self-insured, or its workers' compensation carrier. Any dispute over the amount charged for service rendered under the provisions of this chapter, or over the amount of reimbursement for services rendered under the provisions of this chapter, shall be limited to and resolved between the provider and the employer or carrier in accordance with the fee dispute resolution procedures adopted by the commission.

(4) The liability of an employer for medical treatment as herein provided shall not be affected by the fact that his employee was injured through the fault or negligence of a third party, not in the same employ, provided the injured employee was engaged in the scope of his employment when injured. The employer shall, however, have a cause of action against such third party to recover any amounts paid by him for such medical treatment.

(5) An injured worker who believes that his best interest has been prejudiced by the findings of the physician designated by the employer or carrier shall have the privilege of a medical examination by a physician of his own choosing, at the expense of the carrier or employer. Such examination may be had at any time after injury and prior to the closing of the case, provided that the charge shall not exceed One Hundred Dollars ($100.00) and shall be paid by the carrier or employer where the previous medical findings are upset, but paid by the employee if previous medical findings are confirmed.

(6) Medical and surgical treatment as provided in this section shall not be deemed to be privileged insofar as carrying out the provisions of this chapter is concerned. All findings pertaining to a second opinion medical examination, at the instance of the employer shall be reported as herein required within fourteen (14) days of the examination, except that copies thereof shall also be furnished by the employer or carrier to the employee. All findings pertaining to an independent medical examination by order of the commission shall be reported as provided in the order for such examination.

(7) Any medical benefits paid by reason of any accident or health insurance policy or plan paid for by the employer, which were for expenses of medical treatment under this section, are, upon notice to the carrier prior to payment by it, subject to subrogation in favor of the accident or health insurance company to the extent of its payment for medical treatment under this section. Reimbursement to the accident or health insurance company by the carrier or employer, to the extent of such reimbursement, shall constitute payment by the employer or carrier of medical expenses under this section. Under no circumstances, shall any subrogation be had by any insurance company against any compensation benefits paid under this chapter.

HISTORY: Codes, 1942, § 6998-08; Laws, 1948, ch. 354, § 7; Laws, 1950, ch. 412, § 5; reenacted and amended, Laws, 1982, ch. 473, § 8; reenacted without change, Laws, 1990, ch. 405, § 8; Laws, 1992, ch. 577, § 3; Laws, 1995, ch. 582, § 2; Laws, 2012, ch. 522, § 3, eff from and after July 1, 2012.

Editor's Notes — Laws of 2012, ch. 522, §§ 10 and 11, provide:

"SECTION 10. The Workers' Compensation Commission shall promulgate a written statement specifying the changes made to the Workers' Compensation Law by this act to every employer in this state subject to the Workers' Compensation Law. Within ten (10) days of receipt of this written statement from the Commission, every employer shall post the Commission's statement in a conspicuous place or places in and about his place or places of business and adjacent to the Notice of Coverage as required by Section 71-3-81.

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, and shall apply to injuries occurring on or after July 1, 2012."

Cross References — Exclusion of medical payments under this section from computation of maximum recovery under this chapter, see § 71-3-13.

Study by Medical Advisory Board of possible use of medical fee schedule, see § 71-3-115.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Liability for services.
3. —Employer required to provide.
4. —Employer not required to provide.
5. —Failure to supply.
6. —Failure to request.
7. Refusal to submit to examination or treatment.
8. Patient-physician communication privilege.
9. Limitation periods.
10. Choice of physicians.
11. Medical records.

1. In general.

Because the Mississippi Workers' Compensation Commission was not required to authorize additional medical treatment for the claimant and it had the discretion to authorize or deny any additional medical treatment for the claimant upon a proper showing by the requesting party, it was acting within its discretion in denying the claimant's motion to depose his doctor and his motion for an independent medical examination. Mabus v. Mueller Indus., 310 So. 3d 1192, 2020 Miss. App. LEXIS 390 (Miss. Ct. App. 2020), cert. denied, 310 So. 3d 830, 2021 Miss. LEXIS 24 (Miss. 2021).

Workers' Compensation Commission did not err in failing to exclude a doctor's deposition based on the four-factor test applicable to determine whether excluding evidence for a transgression in discovery was an appropriate sanction because the doctor was a nonparty witness selected to perform an an employer's medical examination; after the employee served a subpoena on the doctor, he filed his own motion to quash the subpoena and relied on the advice of his counsel to refuse to answer questions. Wright v. Turan-Foley Motors, Inc., 269 So. 3d 160, 2018 Miss. App. LEXIS 35 (Miss. Ct. App. 2018).

Denial of workers' compensation benefits to the employee was proper because, as a result of discrepancies in a doctor's testimony and records in the case, the doctor's testimony and opinions were not credible and were unusable in the determination of disability; the Workers' Compensation Commission was not required to always comply with a treating physician's opinion. Richardson v. Johnson Elec. Auto., Inc., 962 So. 2d 146, 2007 Miss. App. LEXIS 508 (Miss. Ct. App. 2007).

Statute required that disputes over what was reasonable and necessary had to be resolved through the Workers' Compensation Commission's procedures. Walls v. Franklin Corp., 797 So. 2d 973, 2001 Miss. LEXIS 264 (Miss. 2001).

The claimant did not follow the requirements of this section in obtaining treatment where he was not referred to the treating physician by his designated physician. Fleming Enters., Inc. v. Henderson, 741 So. 2d 309, 1999 Miss. App. LEXIS 163 (Miss. Ct. App. 1999).

Albeit without express statutory provision, Mississippi law undoubtedly affords medical providers means through Mississippi Workers' Compensation Commission to recoup fees for treating work-related injuries of employees entitled to workers' compensation insurance benefits. McFadden v. Liberty Mut. Ins. Co., 803 F. Supp. 1178, 1992 U.S. Dist. LEXIS 15913 (N.D. Miss. 1992), aff'd, 988 F.2d 1210, 1993 U.S. App. LEXIS 6486 (5th Cir. Miss. 1993).

Workers' compensation carrier has right to de-authorize chiropractic treatments previously approved by it or by its insured, employer, if it provides for alternative treatment. Norville v. Commercial Union Ins. Co., 690 F. Supp. 558, 1988 U.S. Dist. LEXIS 8508 (S.D. Miss. 1988), aff'd, 866 F.2d 1419, 1989 U.S. App. LEXIS 1445 (5th Cir. Miss. 1989).

An emergency, in contemplation of the provisions of this section [Code 1942, § 6998-08], must allow of no reasonable alternative consistent with the preservation of life or irreparable injury from delay. Ingalls Shipbuilding Corp. v. Holcomb, 217 So. 2d 18, 1968 Miss. LEXIS 1254 (Miss. 1968).

There can be no apportionment of medical benefits under this section [Code 1942, § 6998-08]. Arender v. National Sales, Inc., 193 So. 2d 579, 1966 Miss. LEXIS 1289, 1967 Miss. LEXIS 1552 (Miss. 1966).

Doctor's failure to comply with statute precludes allowance for medical benefits. Crow v. Guy Scoggins General Oilfield Contracting Co., 248 Miss. 1, 158 So. 2d 1, 1963 Miss. LEXIS 368 (Miss. 1963).

Nonpayment of medical expenses does not subject the employer to the twenty per cent penalty prescribed by Code 1942, § 6998-19(f) for nonpayment of any installment of an award; but statutory damages under Code 1942, § 1971 may be allowed. J. H. Moon & Sons v. Hood, 244 Miss. 564, 144 So. 2d 782, 1962 Miss. LEXIS 477 (Miss. 1962).

The right to medical expenses continues after expiration of the maximum benefit period or the payment of the maximum amounts of weekly benefits. J. H. Moon & Sons v. Hood, 244 Miss. 564, 144 So. 2d 782, 1962 Miss. LEXIS 477 (Miss. 1962).

Payments for medical expenses under this section [Code 1942, § 6998-08] are not included in the maximum sums established for specific types of disabilities or death. Graeber Bros., Inc. v. Taylor, 237 Miss. 691, 115 So. 2d 735, 1960 Miss. LEXIS 502 (Miss. 1960).

Where medical findings of a doctor were upset by the testimony of a second doctor, in a workmen's compensation proceeding, the medical bill of the second doctor should have been allowed. Webster Constr. Co. v. Bates, 227 Miss. 207, 85 So. 2d 795, 1956 Miss. LEXIS 676 (Miss. 1956).

2. Liability for services.

Employee could pursue a kidney condition as part of the employee's original compensable lung injury because (1) the condition flowed from the injury's treatment, (2) Miss. Code Ann. § 71-3-15 obliged the employee's employer to provide treatment, and (3) the employer knew a causal link between the treatment and condition was possible. Bellsouth Telecomms., Inc. v. Harris, 174 So. 3d 909, 2015 Miss. App. LEXIS 272 (Miss. Ct. App. 2015).

In a workers' compensation case, the employer was not responsible for payment for any medical services or supplies rendered to the claimant by referral doctors because they were not authorized to treat the claimant by the employer; thus, the administrative law judge properly denied payment for the claimant's medical services rendered by those two doctors. Twine v. City of Gulfport, 833 So. 2d 596, 2002 Miss. App. LEXIS 864 (Miss. Ct. App. 2002).

Employer was not liable for medical services provided to a workers' compensation claimant when those services were provided after the claimant went to the provider without the employer's authorization, even though the employer had previously authorized treatment by the same provider, which the claimant initially declined, because too much time had intervened between the authorized referral and the actual treatment for the reasons for the initial referral to be applicable. Wesson v. Fred's Inc., 811 So. 2d 464, 2002 Miss. App. LEXIS 131 (Miss. Ct. App. 2002).

A specially equipped van qualified as an "other apparatus" under subsection (1) where the claimant was rendered a quadriplegic in a work related accident, had an extremely difficult time riding or getting in and out of a car, had received rehabilitation training as a handicapped driver and had been certified to drive an automobile, but had an unreliable car with about 180,000 miles and had to rent a car or rely on a courier to get to his doctor's appointments. Georgia-Pacific Corp. v. James, 733 So. 2d 875, 1999 Miss. App. LEXIS 22 (Miss. Ct. App. 1999).

Chiropractic services as such are not excluded under the Mississippi Workers' Compensation Act. If the treatment was necessary and the charges were reasonable, a claimant cannot be denied medical benefits solely because the service was rendered by a licensed chiropractor. White v. Hattiesburg Cable Co., 590 So. 2d 867, 1991 Miss. LEXIS 760 (Miss. 1991).

Worker's compensation claimant is entitled to award of medical expenses to extent that expenses have not been paid or payment procured by employer. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584, 1985 Miss. LEXIS 2197 (Miss. 1985).

In a workman's compensation action the claimant made the requisite request from defendants for nursing services where there was uncontradicted evidence that claimant's injuries and the services performed by his wife were described to a representative of his employer's workman's compensation carrier and that claimant also requested payments for services his wife performed in connection with his accident. City of Kosciusko v. Graham, 419 So. 2d 1005, 1982 Miss. LEXIS 2137 (Miss. 1982).

In a damage action commenced by an employee, alleging that he had lost the use of his thumb because his employer had been negligent in placing an unqualified person in the first aid station and in not providing proper medical care and attention after he cut his thumb while working in the scope of his employment, the trial judge properly sustained the employer's affirmative defense that workmen's compensation was the employee's sole and exclusive remedy; the dual capacity doctrine would not be applied, absent legislative enactment. Trotter v. Litton Systems, Inc., 370 So. 2d 244, 1979 Miss. LEXIS 2010 (Miss. 1979).

Where compensable injury is aggravated by treatment, without the injured person's fault, resulting injury or death is also compensable. McBride v. Wetmore & Parman, Inc., 241 Miss. 743, 133 So. 2d 261, 1961 Miss. LEXIS 395 (Miss. 1961).

3. —Employer required to provide.

Although an employer contended that a claimant's treatment should have ended when the claimant refused doctors' orders regarding physical therapy, the Mississippi Workers' Compensation Commission did not err in concluding that future epidural injections, stellate ganglion blocks, and spinal stimulators might be considered in the future under such circumstances as outlined by the Commission. Blackwell v. Howard Indus., 243 So. 3d 774, 2018 Miss. App. LEXIS 43 (Miss. Ct. App. 2018).

Substantial evidence supported the Mississippi Workers' Compensation Commission's (Commission) decision requiring an employer to provide medical treatment for an employee's kidney condition resulting from treatment of the employee's original compensable lung injury because (1) the Commission properly denied the employer's untimely attempt to supplement the record with a contrary medical opinion, (2) supporting medical evidence did not have to find a link between the condition and the injury's treatment to a reasonable medical certainty, and (3) that evidence supported the decision. Bellsouth Telecomms., Inc. v. Harris, 174 So. 3d 909, 2015 Miss. App. LEXIS 272 (Miss. Ct. App. 2015).

Finding in favor of the employee in his workers' compensation action was proper pursuant to Miss. Code Ann. §§ 71-3-17(c)(25), 71-3-37(5), and 71-3-15, where the employee offered medical proof the injury manifested its symptoms in an area other than the initial impact; further, the computation of disability benefits was one cent less than the amount awarded by the administrative judge and the appellate court did not find that a one-cent rounding error difference was arbitrary or capricious, Miss. Code Ann. § 71-3-17(25). Cives Steel Co. Port of Rosedale v. Williams, 905 So. 2d 661, 2004 Miss. App. LEXIS 505 (Miss. Ct. App. 2004).

Employer was bound to provide, pursuant to Miss. Code Ann. § 71-3-15, reasonable medical care for the employee's recovery because there was sufficient evidence to support a finding that the employee had suffered both a lower back and a cervical injury while employed, and both injuries were compensable. Howard Indus. v. Robinson, 846 So. 2d 245, 2002 Miss. App. LEXIS 574 (Miss. Ct. App. 2002).

Injured employee's wife was entitled to payments for the nursing services she provided for the employee, as the evidence showed that her services, such as bathing the employee, assisting in exercises, and dispensing medication, were a necessary part of the employee's life. Port Gibson Oil Works v. Estate of Hughes, 823 So. 2d 613, 2002 Miss. App. LEXIS 443 (Miss. Ct. App. 2002).

Employer was obligated under Workers' Compensation Law to allow claimant to have laprascopic back surgery, where his primary treating physician recommended such surgery, but second physician who saw claimant on limited basis stated that there was only a 50% chance that surgery would allow claimant to return to heavy work, and third physician who saw claimant only once stated that surgery was unnecessary or would not be beneficial to claimant's recovery. Spann v. Wal-Mart Stores, 700 So. 2d 308, 1997 Miss. LEXIS 446 (Miss. 1997).

Nursing care provided by relative to injured workers' compensation claimant is compensable as medical benefit. Mississippi Transp. Comm'n v. Dewease, 691 So. 2d 1007, 1997 Miss. LEXIS 142 (Miss. 1997).

Workers' compensation claimant's failure to present evidence regarding extent of care required before claimant was admitted to nursing home necessitated remand to determine how many hours a day of actual nursing care was needed, nature of services wife performed, and wage rate during relevant period, for purposes of calculating reimbursement for nursing services provided to claimant by his wife. Mississippi Transp. Comm'n v. Dewease, 691 So. 2d 1007, 1997 Miss. LEXIS 142 (Miss. 1997).

If there is evidence that wheelchair van is reasonably necessary for workers' compensation claimant, it may qualify as "other apparatus" for which medical benefits shall be paid. Mississippi Transp. Comm'n v. Dewease, 691 So. 2d 1007, 1997 Miss. LEXIS 142 (Miss. 1997).

Workers' compensation claimant could not recover cost of specially-equipped wheelchair vans, absent evidence that vans were necessary either while claimant lived at home or after he moved to nursing home. Mississippi Transp. Comm'n v. Dewease, 691 So. 2d 1007, 1997 Miss. LEXIS 142 (Miss. 1997).

Workers' compensation claimant's treating physician lacks standing to bring independent tort claim against compensation carrier for bad-faith refusal to pay, inasmuch as such physician is merely unintended third-party creditor beneficiary of insurance contract, and his status thus is merely derivative. McFadden v. Liberty Mut. Ins. Co., 803 F. Supp. 1178, 1992 U.S. Dist. LEXIS 15913 (N.D. Miss. 1992), aff'd, 988 F.2d 1210, 1993 U.S. App. LEXIS 6486 (5th Cir. Miss. 1993).

Under § 71-3-15, an employer was required to pay an injured employee's medical expenses, even though they already had been paid under a health and accident insurance policy bought and paid for by the employee/claimant, which was not intended to be in lieu of compensation under the Workmen's Compensation Act, and which was a contract between the claimant and her insurer to which her employer had no privity and from which he could not be allowed to derive a benefit. Bowen v. Magic Mart of Corinth, 441 So. 2d 548, 1983 Miss. LEXIS 3026 (Miss. 1983).

The circuit court properly ordered that claimant's wife be paid at the rate of $2.25 an hour for four hours nursing daily from the time of her request for such payment until the time of award where evidence supported the findings as to hours of nursing needed and the proper rate of pay; with respect to the claim for a similar recovery for the period after injury and prior to the request for payment, the cause was remanded to the workmen's compensation commission for a hearing in which, inter alia, the employer and carrier would be allowed to defend and in which there could be evidence as to how many hours per day of nursing services would have been required. Graham v. Kosciusko, 339 So. 2d 60, 1976 Miss. LEXIS 1665 (Miss. 1976).

Where the employees of two corporations were working together under the supervision of an employee of the first, and where the employee of the second corporation, after sustaining a minor injury was en route to a doctor, being driven by an employee of the first corporation under the direction of the supervisor, and en route was involved in an accident, the corporations were not exonerated from liability on the ground that there was no obligation to furnish medical service, since Code 1942, § 6998-08 places a duty upon an employer to furnish medical services to an injured employee, and if necessary to transport the employee to a doctor. Glenn's All American Sportswear, Inc. v. Thompson, 257 So. 2d 866, 1972 Miss. LEXIS 1477 (Miss. 1972).

Where an injured employee was told by her employer to go to whatever doctor she had to go to and do whatever she had to do to get better, there was an uncontradicted and express authorization on the part of the employer for the employee to select a doctor of her choice, and where the employee went to her family physician who referred her to an orthopedic surgeon, the statutory limitation on the expenses to be borne by the employer where the employee selects his own physician did not apply, and the employer was liable for all of the medical bills including the expenses of two additional doctors selected by the employee. American Partition Co. v. Thornton, 231 So. 2d 190, 1970 Miss. LEXIS 1578 (Miss. 1970).

Where the proof was that plaintiff's gastric ulcer was precipitated into activity by a back injury he sustained on the job, and the evidence conclusively showed that treatment of the ulcer was required for the process of recovery, the allowance of the medical expenses for its treatment was proper. Frazier v. State, 190 So. 2d 863, 1966 Miss. LEXIS 1406 (Miss. 1966).

Where medical testimony indicated that the use of certain drugs by a claimant who had suffered a mild myocardial infarction were necessary in order to prevent a second heart attack, the commission's order requiring the employer and insurer to bear the cost of furnishing the drugs was affirmed. Southern Auto Co. v. Bergin, 187 So. 2d 879, 1966 Miss. LEXIS 1368 (Miss. 1966).

One into whose eye a spectacle lens has been shattered by a flying object is entitled to immediate examination by a doctor, and to replacement of the broken lens. Teague v. Graning Hardwood Mfg. Co., 238 Miss. 48, 117 So. 2d 342, 1960 Miss. LEXIS 375 (Miss. 1960).

Where reputable doctors determined that the process of claimant's recovery from an injury resulting from an accident arising within the course of his employment required the extraction of his lower teeth, the employer was properly required to provide for the claimant a lower set of false teeth to replace those extracted. B. C. Rogers & Sons v. Reeves, 232 Miss. 309, 98 So. 2d 875, 1957 Miss. LEXIS 477 (Miss. 1957).

4. —Employer not required to provide.

Substantial evidence supported the Mississippi Workers' Compensation Commission's denial of an employee's treatment request because (1) an expert said the treatment was not needed or causally related to the employee's work injury, as the employee did not have complex regional sympathetic dystrophy and the employee's pain complaints were due to nonwork-related psychological issues, (2) the employee's medical records did not address the complaints' relation to the employee's compensable injury, and (3) this did not deny the employee's right to select a physician. Hamilton v. Southwire Co., 191 So. 3d 1275, 2016 Miss. App. LEXIS 264 (Miss. Ct. App. 2016).

Employee was not entitled to certiorari relief because an administrative law judge (ALJ) correctly found that the employee's treatment by three doctors fell outside the appropriate statutory chain of referral, the record did not support the employee's assertion that the ALJ and the Mississippi Workers' Compensation Commission disregarded the medical testimony of her unauthorized physicians, and the Commission's findings were supported by substantial evidence. Allegrezza v. Greenville Mfg. Co., 122 So. 3d 719, 2013 Miss. LEXIS 474 (Miss. 2013).

Referrals to additional neurosurgeons required prior approval from either the employer or the Workers' Compensation Commission under Miss. Code Ann. § 71-3-15(1). Because the employee did not show any evidence that she was denied approval or sought assistance from the Commission, the employer was not responsible for the medical expenses of two doctors. Wal-Mart Stores, Inc. v. Patrick, 5 So. 3d 1119, 2008 Miss. App. LEXIS 394 (Miss. Ct. App. 2008), cert. denied, 11 So. 3d 1250, 2009 Miss. LEXIS 182 (Miss. 2009).

Appellate court held an employer was not obligated to pay for a claimant's continuing treatment as it had been determined that the claimant had reached maximum medical improvement with regard to his closed head injury, and his continued treatment was necessary due to a preexisting bipolar disorder. Havard v. Titan Tire Corp., 919 So. 2d 995, 2005 Miss. App. LEXIS 429 (Miss. Ct. App. 2005).

Physicians' testimony that smoking would not have caused the fibrotic scarring to the lungs that the employee suffered, was not wholly conclusive, but was supported by substantial evidence, as was evidence of the employee's decreased earning capacity, because the employee required the assistance of a co-employee for more strenuous tasks; thus, the employee's award of benefits for permanent disability and loss of wage-earning capacity was proper. Cooper Tire & Rubber Co. v. Harris, 837 So. 2d 789, 2003 Miss. App. LEXIS 79 (Miss. Ct. App. 2003), amended, 2003 Miss. App. LEXIS 301 (Miss. Ct. App. Apr. 8, 2003).

Where injured employee failed to get his employer's approval to get subsequent treatment from other doctors, after the doctor provided by his employer found the employee had reached maximum medical recovery, and the first doctor the employee went to agreed the employee had reached maximum medical recovery, there was no error in finding the subsequent treatment was not reasonable. Congleton v. Shellfish Culture, Inc., 807 So. 2d 492, 2002 Miss. App. LEXIS 80 (Miss. Ct. App. 2002).

The employer was not required to pay for services rendered by a particular physician where (1) approximately 10 months after the claimant's injury, the physician examined him for neck pain, and (2) prior to this examination, the claimant had not complained principally of neck pain which resulted from his work injury; based on these facts as well as a comparison of the results of MRI tests, the commission properly found that the claimant did not sustain a compensable neck injury and properly denied payment of the physician's bills. Bowen v. City of Holly Springs, 755 So. 2d 1103, 1999 Miss. App. LEXIS 257 (Miss. Ct. App. 1999).

The Workers' Compensation Commission properly found that treatments consisting of a series of epidural blocks, trigger point injections, electrical stimulation, traction, and physical therapy were neither reasonable nor necessary where the claimant testified that she only obtained temporary benefit from the treatments and the commission was unable to find any measurable improvement as a result. Baugh v. Central Miss. Planning & Dev. Dist., 740 So. 2d 342, 1999 Miss. App. LEXIS 154 (Miss. Ct. App. 1999).

One whose pre-existing injury was aggravated by his employment is not entitled to the provision of surgical treatment where other treatment has restored him to his pre-accident condition. Lloyd Ford Co. v. Price, 240 Miss. 250, 126 So. 2d 529, 1961 Miss. LEXIS 456 (Miss. 1961).

5. —Failure to supply.

The statute requiring the employer to furnish medical services is mandatory in form, and the employer is not relieved of his duty to furnish such medical services by the mere offer of the foreman to carry the claimant to town to see a doctor immediately after an injury and the claimant's failure to accept that offer. Pepper v. Barrett, 225 Miss. 30, 82 So. 2d 580, 1955 Miss. LEXIS 555 (Miss. 1955).

Where claimant, who suffered a heart attack while working as a helper on an oil well servicing crew, went to his personal physician after the employer had failed to supply medical help, the claimant was entitled to medical benefits. Thornbrough Well Servicing Co. v. Brown, 223 Miss. 322, 78 So. 2d 159, 1955 Miss. LEXIS 383 (Miss. 1955).

6. —Failure to request.

Preapproval of the neurosurgeon's treatment was not required, because there was only one referral from the treating physician. Miller v. Johnson Controls, 138 So. 3d 248, 2014 Miss. App. LEXIS 247 (Miss. Ct. App. 2014).

Mississippi Workers' Compensation Commission's refusal to consider the treatments of the claimant by three doctors and the denial of the claimant's motion to amend her petition to claim psychological overlay were proper as the claimant failed to seek permission from the employer or its carrier before receiving treatment from those doctors as required by Miss. Code Ann. § 71-3-15(1); no evidence of psychiatric complaints existed before the claimant's release to return to work under the rehabilitation specialist's restrictions. Allegrezza v. Greenville Mfg. Co., 122 So. 3d 755, 2012 Miss. App. LEXIS 594 (Miss. Ct. App. 2012), aff'd, 122 So. 3d 719, 2013 Miss. LEXIS 474 (Miss. 2013).

Workers' compensation claimant's obtaining of medical treatment by a doctor outside of the chain-of-referral merely because it was more convenient to his home did not constitute an emergency where there was no serious effort by the claimant to obtain approval for the medical treatment. Mosby v. Farm Fresh Catfish Co., 19 So. 3d 789, 2009 Miss. App. LEXIS 669 (Miss. Ct. App. 2009).

An employee who had gone to his own private family physician and had not requested that his employer send him to a company doctor after he became ill was nonetheless entitled to recover his medical expenses where the employee had not become aware of the seriousness of his disease or its relation to his employment until he had been released from the hospital and where the employee and his doctors had used reasonable care and diligence to determine the true nature of the disease. Sperry-Vickers, Inc. v. Honea, 394 So. 2d 1380, 1981 Miss. LEXIS 1968 (Miss. 1981).

In a proceeding by a paraplegic for compensation for the assistance rendered by his wife over and above that called for by her ordinary duties (§ 71-3-1 et seq), the claimant's compliance with the request requirement of this section was evidenced by the insurer's letter denying the requested compensation and by the administrative law judge's responses to interrogatories concerning the paraplegic's preservation of his rights at the time of the hearing on a petition requesting modification of his home. Sanders v. State, 379 So. 2d 538, 1980 Miss. LEXIS 1914 (Miss. 1980).

The refusal of a claimant suffering from a ruptured disc in the lower part of his spine to undergo an operation for the condition on the ground that he was afraid of the operation was not unreasonable. Triangle Distributors v. Russell, 268 So. 2d 911, 1972 Miss. LEXIS 1214 (Miss. 1972).

When an employer furnished medical treatment for a claimant's injury, but the claimant became dissatisfied with that treatment and consulted a doctor of his own choosing without advising his employer of his decision to do so, and the claimant made no demand upon the employer to provide for an operation found to be necessary by the new physician, the employer, although liable for the cost of the claimant's examination by the new physician not to exceed $100, was not liable for the cost of the operation. Williamson v. Delta Millworks, Inc., 262 So. 2d 183, 1972 Miss. LEXIS 1311 (Miss. 1972).

A claimant, allegedly injured on the job two weeks previously, who returned to his home in another town while on his way to work, from a desire to have his family physician attend him, rather than because of an emergency, could not recover all of his subsequent medical expenses from his employer, in the absence of evidence that the employer knew of claimant's actual condition and therefore had an opportunity to provide necessary treatment. Ingalls Shipbuilding Corp. v. Holcomb, 217 So. 2d 18, 1968 Miss. LEXIS 1254 (Miss. 1968).

This section [Code 1942, § 6998-08] limits the liability of the employer for the bills of physicians called by the injured employee without having requested further service from the employer. Smith v. Crown Rigs, Inc., 245 Miss. 311, 148 So. 2d 195, 1963 Miss. LEXIS 521 (Miss. 1963).

Where neither employee nor employer was aware of seriousness of employee's injuries, and employee made no request that employer furnish medical services, but undertook to provide medical help for himself, an award might not thereafter be made against employer for accrued medical and hospital bills. Ingalls Shipbuilding Corp. v. Byrd, 215 Miss. 234, 60 So. 2d 645, 1952 Miss. LEXIS 558 (Miss. 1952).

7. Refusal to submit to examination or treatment.

Substantial evidence supported the Mississippi Workers' Compensation Commission's decision to deny a claimant total disability benefits because various physicians who saw the claimant determined that the claimant's failure to participate steadfastly in recommended physical therapy impacted the claimant's condition. Blackwell v. Howard Indus., 243 So. 3d 774, 2018 Miss. App. LEXIS 43 (Miss. Ct. App. 2018).

Substantial evidence supported the Workers' Compensation Commission's decision finding that the claimant was entitled to permanent partial disability benefits commensurate with an impairment rating of only 10 percent where there was testimony that the claimant's failure to follow through with her physical therapy may well have been the reason for her loss of motion range. Posey v. United Methodist Senior Servs., 773 So. 2d 976, 2000 Miss. App. LEXIS 562 (Miss. Ct. App. 2000).

Workmen's Compensation Commission did not err in requiring claimant to submit to medical examination after, and not prior to, making the award in favor of the claimant. Roberts v. Junior Food Mart, 308 So. 2d 232, 1975 Miss. LEXIS 1855 (Miss. 1975).

The commission's authority to order a claimant to submit to a medical examination by a physician of its choice is clear. Everitt v. Lovitt, 192 So. 2d 422, 1966 Miss. LEXIS 1257 (Miss. 1966).

Whether an injured employee's refusal to submit to proper medical treatment is unreasonable is ordinarily a question of fact for the determination of the Workmen's Compensation Commission. Walker v. International Paper Co., 230 Miss. 95, 92 So. 2d 445, 1957 Miss. LEXIS 349 (Miss. 1957).

The burden of proving that an operation tendered to an insured workman is simple, safe, and will probably affect a cure or substantial improvement for the employee was upon the employer. Walker v. International Paper Co., 230 Miss. 95, 92 So. 2d 445, 1957 Miss. LEXIS 349 (Miss. 1957).

While an injured workman will be denied compensation for incapacity which may be removed or modified by an operation of a simple character, not involving serious suffering or danger, where the operation is of a serious character, involves serious suffering or danger, or is doubtful of success, an injured employee's refusal to submit to such an operation is not unreasonable, and the right to compensation is not precluded by such refusal. Walker v. International Paper Co., 230 Miss. 95, 92 So. 2d 445, 1957 Miss. LEXIS 349 (Miss. 1957).

Since the workmen's compensation commission's order, holding that a claimant's refusal to submit to surgery for a herniated disc was not unreasonable and was supported by substantial evidence, the commission's order awarding claimant compensation was reinstated and affirmed. Walker v. International Paper Co., 230 Miss. 95, 92 So. 2d 445, 1957 Miss. LEXIS 349 (Miss. 1957).

8. Patient-physician communication privilege.

Correspondence between employer's counsel and claimant's treating physician was not an impermissible non-consensual ex parte communication because the claimant's counsel was copied on the correspondence requesting clarification of the physician's opinions, but made no objection to the communication or the physician's response in a letter report. Therefore, the administrative judge and the Mississippi Workers' Compensation Commission did not err in considering the physician's letter report. Jones v. Univ. of Miss. Med. Ctr., 309 So. 3d 1135, 2021 Miss. App. LEXIS 7 (Miss. Ct. App. 2021).

Code 1942, § 6998-08 does not prohibit the invocation of the patient-physician communication privilege in proceedings before the Mississippi workmen's compensation commission. Cooper's, Inc. of Mississippi v. Long, 224 So. 2d 866, 1969 Miss. LEXIS 1301 (Miss. 1969).

Although the patient-physician communication privilege rule of evidence is not abolished by the Workmen's Compensation Law except insofar as it is specifically provided under Code 1942, § 6998-08, there is, however, under Code 1942, § 6998-28 a grant of authority to the workmen's compensation commission to relax, in its discretion, the traditional common law and statutory rules of evidence in order to obtain a full development of the facts concerning each claim; and, in the instant case the attorney referee did not abuse his discretion in refusing to relax the patient-physician communication privilege in order to let in testimony concerning the claimant's alleged pre-existing injury. Cooper's, Inc. of Mississippi v. Long, 224 So. 2d 866, 1969 Miss. LEXIS 1301 (Miss. 1969).

9. Limitation periods.

A physician's failure to file his medical reports with either the employer/carrier or the Mississippi Workers' Compensation Commission did not bar the claimant from asserting that his 1991 leg injury was the cause of his subsequent venous condition; the filing deadline on which the employer/carrier centered its argument was in no sense jurisdictional and the statute goes to compensation of work related injuries and not to establishing the causation. Siemens Energy & Automation, Inc. v. Pickens, 732 So. 2d 276, 1999 Miss. App. LEXIS 268 (Miss. Ct. App. 1999).

An application for additional medical benefits by claimant who had refused to sign the final report and settlement receipt was timely where filed within less than one year after the claimant had received notice that the employer had filed with the workmen's compensation commission a final report and settlement receipt, properly filled out. International Paper Co. v. Evans, 244 Miss. 49, 140 So. 2d 271, 1962 Miss. LEXIS 422 (Miss. 1962).

The limitation period for making application for an adjudication of claimant's right to receive medical attention after payment of maximum benefits, does not begin to run while the claimant is receiving such attention. Gibbs v. Bass, 237 Miss. 823, 116 So. 2d 542, 1959 Miss. LEXIS 537 (Miss. 1959).

Payment of medical expense is payment of compensation tolling the statute of limitations. Graeber Bros., Inc. v. Taylor, 237 Miss. 691, 115 So. 2d 735, 1960 Miss. LEXIS 502 (Miss. 1960).

The Workmen's Compensation Law evidences the legislative intent to put the same period of limitations on the payment of medical benefits as has been put on the payment of compensation. Trehern v. Grafe Auto Co., 232 Miss. 854, 100 So. 2d 786, 1958 Miss. LEXIS 339 (Miss. 1958).

Where a claimant, who had been paid some medical expenses and compensation benefits, together with the carrier, executed a form under which the claim was closed, a claim for additional medical benefits filed nearly four years later was barred by the statute of limitations. Trehern v. Grafe Auto Co., 232 Miss. 854, 100 So. 2d 786, 1958 Miss. LEXIS 339 (Miss. 1958).

10. Choice of physicians.

Lower court erred in overruling an order from the Mississippi Workers' Compensation Commission that an injured employee did not need surgery because the Commission based its findings on the opinions of two competent doctors and on the findings of medical tests and procedures. Lower court's application of caselaw was contrary to Miss. Code Ann. § 71-3-15(1), which allowed the employer to have the employee examined by a physician other than one of the employee's choosing. Hardaway Co. v. Bradley, 887 So. 2d 793, 2004 Miss. LEXIS 1377 (Miss. 2004).

Corporation's argument that insurance carrier and its employee, the adjuster, could not choose which home nursing services provider to pay for was without merit; the language of Miss. Code Ann. § 71-3-15 did not provide that the injured employee had the right to choose his nurse or therapist, the record did not reveal that the doctor remained to administer care to the patient, he merely referred the injured employee to a home health care provider. PDN, Inc. v. Loring, 843 So. 2d 685, 2003 Miss. LEXIS 198 (Miss. 2003).

Under the pre-1992 version of the statute, which permitted a claimant "to select a competent physician of his choosing to administer medical treatment," an initial physician such as the claimant's family doctor could make a preliminary diagnosis and then refer the claimant to someone more expert regarding that ailment; there was no legislative limit on the number of referrals that successive doctors could make as proper care for a claimant. Dulaney v. National Pizza Co., 733 So. 2d 301, 1998 Miss. App. LEXIS 990 (Miss. Ct. App. 1998).

Once a claimant has fully abandoned an employer's doctors, the claimant may again exercise discretion to see a personal choice physician. Dulaney v. National Pizza Co., 733 So. 2d 301, 1998 Miss. App. LEXIS 990 (Miss. Ct. App. 1998).

A claimant may change her choice between employer-provided and personally-selected physicians, but at all times a choice has to be made. Dulaney v. National Pizza Co., 733 So. 2d 301, 1998 Miss. App. LEXIS 990 (Miss. Ct. App. 1998).

11. Medical records.

Subsection (6) was interpreted as opening up for consideration by the Workers' Compensation Commission all medical records generated as a part of the claimant's treatment for the injuries that formed the basis for his claim; this interpretation was neutral and not prejudicial to either side in a contested claim since it was often the case that the patient history would reflect the claimant's contention that the injury occurred on the job, rather than an assertion to the contrary, and that contention would be a proper factor in the commission's inquiry. Nosser v. First Am. Credit Corp., 814 So. 2d 178, 2002 Miss. App. LEXIS 193 (Miss. Ct. App. 2002).

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Am. Jur.

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8 Am. Jur. Proof of Facts 3d 145, Use of CAT Scans in Litigation.

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§ 71-3-17. Compensation for disability.

Compensation for disability shall be paid to the employee as follows:

(a) Permanent total disability: In case of total disability adjudged to be permanent, sixty-six and two-thirds percent (66-⅔%) of the average weekly wages of the injured employee, subject to the maximum limitations as to weekly benefits as set up in this chapter, shall be paid to the employee not to exceed four hundred fifty (450) weeks or an amount greater than the multiple of four hundred fifty (450) weeks times sixty-six and two-thirds percent (66-⅔%) of the average weekly wage for the state. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two (2) thereof shall constitute permanent total disability. In all other cases, permanent total disability shall be determined in accordance with the facts.

(b) Temporary total disability: In case of disability, total in character but temporary in quality, sixty-six and two-thirds percent (66-⅔%) of the average weekly wages of the injured employee, subject to the maximum limitations as to weekly benefits as set up in this chapter, shall be paid to the employee during the continuance of such disability not to exceed four hundred fifty (450) weeks or an amount greater than the multiple of four hundred fifty (450) weeks times sixty-six and two-thirds percent (66-⅔%) of the average weekly wage for the state. Provided, however, if there arises a conflict in medical opinions of whether or not the claimant has reached maximum medical recovery and the claimant's benefits have been terminated by the carrier, then the claimant may demand an immediate hearing before the commissioner upon five (5) days' notice to the carrier for a determination by the commission of whether or not in fact the claimant has reached maximum recovery.

(c) Permanent partial disability: In case of disability partial in character but permanent in quality, the compensation shall be sixty-six and two-thirds percent (66-⅔%) of the average weekly wages of the injured employee, subject to the maximum limitations as to weekly benefits as set up in this chapter, which shall be paid following compensation for temporary total disability paid in accordance with paragraph (b) of this section, and shall be paid to the employee as follows:

Member Lost	Number Weeks Compensation
(1) Arm	200
(2) Leg	175
(3) Hand	150
(4) Foot	125
(5) Eye	100
(6) Thumb	60
(7) First finger	35
(8) Great toe	30
(9) Second finger	30
(10) Third finger	20
(11) Toe other than great toe	10
(12) Fourth finger	15
(13) Testicle, one	50
(14) Testicle, both	150
(15) Breast, female, one	50
(16) Breast, female, both	150

(17) Loss of hearing: Compensation for loss of hearing of one (1) ear,

forty (40) weeks. Compensation for loss of hearing of both ears, one hundred fifty (150) weeks.

(18) Phalanges: Compensation for loss of more than one (1) phalange of a digit shall be the same as for loss of the entire digit. Compensation for loss of the first phalange shall be one-half (½) of the compensation for loss of the entire digit.

(19) Amputated arm or leg: Compensation for an arm or leg, if amputated at or above wrist or ankle, shall be for the loss of the arm or leg.

(20) Binocular vision or percent of vision: Compensation for loss of binocular vision or for eighty percent (80%) or more of the vision of an eye shall be the same as for loss of the eye.

(21) Two (2) or more digits: Compensation for loss of two (2) or more digits, or one (1) or more phalanges of two (2) or more digits, of a hand or foot may be proportioned to the loss of the use of the hand or foot occasioned thereby, but shall not exceed the compensation for loss of a hand or foot.

(22) Total loss of use: Compensation for permanent total loss of use of a member shall be the same as for loss of the member.

(23) Partial loss or partial loss of use: Compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member.

(24) Disfigurement: The commission, in its discretion, is authorized to award proper and equitable compensation for serious facial or head disfigurements not to exceed Five Thousand Dollars ($5,000.00). No such award shall be made until a lapse of one (1) year from the date of the injury resulting in such disfigurement.

(25) Other cases: In all other cases in this class of disability, the compensation shall be sixty-six and two-thirds percent (66-⅔%) of the difference between his average weekly wages, subject to the maximum limitations as to weekly benefits as set up in this chapter, and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the commission on its own motion or upon application of any party in interest. Such payments shall in no case be made for a longer period than four hundred fifty (450) weeks.

(26) In any case in which there shall be a loss of, or loss of use of, more than one (1) member or parts of more than one (1) member set forth in subparagraphs (1) through (23) of this paragraph (c), not amounting to permanent total disability, the award of compensation shall be for the loss of, or loss of use of, each such member or parts thereof, which awards shall run consecutively, except that where the injury affects only two (2) or more digits of the same hand or foot, subparagraph (21) of this paragraph (c) shall apply.

HISTORY: Codes, 1942, § 6998-09; Laws, 1948, ch. 354, § 8a-c; Laws, 1950, ch. 412, § 6; Laws, 1958, ch. 454, § 3; Laws, 1968, ch. 559, § 5; Laws, 1972, ch. 522, § 3; Laws, 1976, ch. 459, § 2; Laws, 1979, ch. 442, § 2; Laws, 1981, ch. 341, § 2; reenacted, Laws, 1982, ch. 473, § 9; Laws, 1984, ch. 402, § 2; Laws, 1988, ch. 446, § 3; reenacted without change, Laws, 1990, ch. 405, § 9; Laws, 2012, ch. 522, § 4, eff from and after July 1, 2012.

Editor's Notes — Laws of 1988, ch. 446, § 6, provides as follows:

"SECTION 6. This act shall take effect and be in force from and after July 1, 1988; provided, however, the increase in benefits allowed under this act shall apply only to claims arising on or after July 1, 1988."

Laws of 2012, ch. 522, §§ 10 and 11, provide:

"SECTION 10. The Workers' Compensation Commission shall promulgate a written statement specifying the changes made to the Workers' Compensation Law by this act to every employer in this state subject to the Workers' Compensation Law. Within ten (10) days of receipt of this written statement from the Commission, every employer shall post the Commission's statement in a conspicuous place or places in and about his place or places of business and adjacent to the Notice of Coverage as required by Section 71-3-81.

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, and shall apply to injuries occurring on or after July 1, 2012."

Cross References — State employee who is absent and disabled from work due to work-related injury prohibited from receiving more than 100% of his wages through the use of accrued personal and medical leave combined with certain workers' compensation benefits, see § 25-3-95.

Maximum and minimum recovery, see § 71-3-13.

Provision of medical services and supplies, see § 71-3-15.

Temporary partial disability, see § 71-3-21.

Additional compensation, see §§ 71-3-23 (hernia), 71-3-25 (death), 71-3-27 (for aliens), 71-3-71 (for injuries where third parties are liable), 71-3-107 (for minors illegally employed).

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JUDICIAL DECISIONS

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1. In general.

Doctor's testimony that the worker's repetitive work activity was a "possible" cause of her injury, when coupled with evidence that a stress fracture was not caused by a specific event and the worker's testimony that she did not engage in other repetitive-type activities, was sufficient to sustain a compensability finding; the employer did not present any credible evidence, medical or lay, pointing to any alternative cause of the worker's injury. Cooper Tire & Rubber Co. v. Loveless, 312 So. 3d 395, 2021 Miss. App. LEXIS 75 (Miss. Ct. App. 2021).

Workers' Compensation Commission properly determined that an employee was capable of performing the substantial acts of her usual employment and that she was not permanently and totally disabled or entitled to benefits because the employee's testimony that she was unable to perform the jobs offered to her upon her return to the employer, combined with her contention that she was unemployable, was insufficient to overcome the high burden of showing that the Commission's decision was unsupported by substantial evidence, and she failed to provide any evidence or testimony that she was, in fact, unable to perform the job presented to her when she returned to the employer for a few hours. Smith v. Howard Indus., Inc., 271 So. 3d 774, 2018 Miss. App. LEXIS 647 (Miss. Ct. App. 2018).

Award of permanent partial disability benefits was upheld and the employer's argument that the claimant did not document a job search for a year and a half after he was terminated and reached maximum medical improvement went to the weight of the evidence, not its sufficiency. Howard Indus. v. Hardaway, 191 So. 3d 1257, 2015 Miss. App. LEXIS 465 (Miss. Ct. App. 2015), cert. denied, 202 So. 3d 208, 2016 Miss. LEXIS 207 (Miss. 2016).

Employee was not entitled to any benefits in excess of those already paid by the employer because she did not establish any additional loss of industrial use in excess of her medical ratings, and she was currently employed within her restrictions and earning a higher wage than her pre-injury wage. Gaston v. Tyson Foods, Inc., 122 So. 3d 797, 2013 Miss. App. LEXIS 603 (Miss. Ct. App. 2013).

Where there was conflicting medical evidence regarding a claimant's lumbar condition and her need for lumbar spine injury, an appellate court could not say that the Workers' Compensation Commission's decision to deny benefits was arbitrary and capricious. Washington v. Woodland Vill. Nursing Home, 25 So. 3d 341, 2009 Miss. App. LEXIS 108 (Miss. Ct. App. 2009), cert. denied, 24 So. 3d 1038, 2010 Miss. LEXIS 2 (Miss. 2010).

Where an employee suffered a back injury while working, an administrative law judge's (ALJ) finding that an elective back surgery, related treatment, and psychological care were non-compensable was upheld because, inter alia, (1) the ALJ was not required to defer to "treating" or patient-selected physicians, (2) substantial evidence supported the finding that the employee did not require surgery, and (3) there was evidence that the employee had underlying psychiatric problems stemming from childhood abuse unrelated to the work injury. Manning v. Sunbeam-Oster Household Prods., 979 So. 2d 736, 2008 Miss. App. LEXIS 230 (Miss. Ct. App. 2008).

Mississippi Workers' Compensation Commission correctly found that the employee was entitled to permanent partial disability benefits where his treating physician testified to a reasonable degree of medical certainty that there were no other caused of the employee's blindness other than the trauma suffered as a result of the work-related accident. Metalloy Corp. v. Gathings, 990 So. 2d 191, 2007 Miss. App. LEXIS 593 (Miss. Ct. App. 2007).

Denial of appellee's workers' compensation claim was not supported by substantial evidence; appellee contemporaneously and consistently reported her injury to three supervisors as well as doctors, she had no history of back trouble, the claim was not contradicted the fact that she used personal insurance to pay for her visits, and medical records corroborated the time, nature, and origin of injury. Waffle House, Inc. v. Allam, 976 So. 2d 919, 2007 Miss. App. LEXIS 466 (Miss. Ct. App. 2007).

Where several doctors opined that an employee's repetitive act of reaching for a time clock 300 to 400 times per day aggravated a pre-existing condition, temporary total disability benefits were properly awarded due to Miss. Code Ann. § 71-3-3(b). Casino Magic v. Nelson, 958 So. 2d 224, 2007 Miss. App. LEXIS 41 (Miss. Ct. App. 2007).

Employer's claim that the employee was not entitled to benefits in a workers' compensation action because she did not conduct a job search was inappropriate because a job search was not part of the employee's burden of proof since loss of use of two major scheduled members automatically gave rise to permanent total disability and 450 weeks of benefits as set forth in Miss. Code Ann. § 71-3-17(a)(c)(22). Union Camp Corp. v. Hall, 955 So. 2d 363, 2006 Miss. App. LEXIS 696 (Miss. Ct. App. 2006), cert. dismissed, 956 So. 2d 228, 2007 Miss. LEXIS 215 (Miss. 2007).

Where a claimant's injury was not scheduled, the court determined on the facts that the claimant was not entitled to partial permanent disability benefits under Miss. Code Ann. § 71-3-3(i) as the claimant failed to establish that he had sought similar work as a tire builder and the employer had refused to rehire or reinstate him. Havard v. Titan Tire Corp., 919 So. 2d 995, 2005 Miss. App. LEXIS 429 (Miss. Ct. App. 2005).

Medical testimony from the employee's treating physicians supported the permanence of his disability as follows: (1) one physician testified that he had suffered a 20 percent permanent medical impairment to his entire body due to his neck injury' (2) a second physician restricted him to medium duty based on clinical examinations, diagnostic tests, and his complaints of pain; (3) three years after the accident, the employee was further restricted to light duty; and (4) a third physician concluded that he would "never be able to return to duty without severe spasm." The record was clear that he was unable to return to his work as a diesel mechanic due to his injury, and that he had also incurred a 50 percent reduction in his earning capacity given his pain, his age, and his occupational history. Bryan Foods, Inc. v. White, 913 So. 2d 1003, 2005 Miss. App. LEXIS 266 (Miss. Ct. App.), cert. denied, 921 So. 2d 344, 2005 Miss. LEXIS 710 (Miss. 2005).

Employee was not entitled to permanent disability benefits where the Workers' Compensation Commission found that the employee's pre-existing condition, as shown by her 1993 and 1998 post-injury x-ray was aggravated by her May 25, 1998 work injury; however, as illustrated by her videotaped exploits, the temporary effects of that work injury had fully subsided and any subsequent disability was attributable to the preexisting disease or condition. Lee v. Singing River Hosp., 908 So. 2d 159, 2005 Miss. App. LEXIS 303 (Miss. Ct. App. 2005).

Mississippi Workers' Compensation Commission properly found there was no medical evidence to support a claim for disability, either temporary or total, as a result of the employee's four slip and falls in October and November of 1997, nor was there any testimony to connect the employee's alleged injuries to the falls. One of his primary physicians, testified that the employee's complaints were the same as his complaints in 1995 after an accident the employee had while working for a different employer, and although he had gone to the emergency room after two of the 1997 falls, he did not thereafter seek treatment, and it was not until October of 1998 that he saw his primary physician and complained of an on-the-job injury while working for the employer in the case at bar; the employee admitted that he recovered from his preexisting back injuries sufficiently to enable him to maintain gainful employment, and any subsequent disability the employee claimed was not compensable. Eubanks v. Prof'l Bldg. Servs., 909 So. 2d 1132, 2005 Miss. App. LEXIS 68 (Miss. Ct. App. 2005).

Although the evidence conflicted, there was some evidence to suggest that the claimant had attempted to find subsequent employment, and because there was such evidence, the trial court's decision to affirm the Mississippi Workers' Compensation Commission's ruling in awarding the claimant benefits was not clearly erroneous; despite conflicting evidence regarding the claimant's notification of her injury and her possible motivations for asserting a claim, the administrative judge concluded that she had sustained a work-related injury and chose to disregard the employer's assertions to the contrary. Merit Distrib. Servs., Inc. v. Hudson, 883 So. 2d 134, 2004 Miss. App. LEXIS 943 (Miss. Ct. App. 2004).

Disability is determined by actual physical injury and loss of wage earning capacity. Sherwin Williams v. Brown, 877 So. 2d 556, 2004 Miss. App. LEXIS 655 (Miss. Ct. App. 2004).

Workers' compensation claimant's failure to pursue the remedy provided by Miss. Code Ann. § 71-3-17(b) – i.e., to seek an immediate hearing on the insurer's termination of benefits – weighed on his claims for emotional and mental distress damages brought in his bad faith claim against the insurer, but did not bar him from pursuing that bad faith claim. Liberty Mut. Ins. Co. v. McKneely, 862 So. 2d 530, 2003 Miss. LEXIS 691 (Miss. 2003).

Although a claimant is not entitled to compensation when he or she receives his or her regular salary in lieu of compensation, sick pay, vacation pay, donations or gratuities are not salary in lieu of compensation; thus, a claimant should have been awarded benefits during the time he was on vacation and receiving vacation pay where he was totally disabled at the time he took his vacation leave. Lanterman v. Roadway Express, Inc., 608 So. 2d 1340, 1992 Miss. LEXIS 564 (Miss. 1992).

Section 71-3-17(a) covers all cases of permanent total occupational disability, to the exclusion of § 71-3-17(c) which by its title and its terms covers only permanent partial occupational disability (although it may be permanent, total loss of use of a specific member); where an employee suffers an injury covered by the schedule in § 71-3-17(c) and where that injury results in a permanent loss of wage earning capacity within § 71-3-17(a), the latter section controls exclusively and the employee is not limited to the number of weeks of compensation prescribed in § 71-3-17(c)'s schedule. Smith v. Jackson Constr. Co., 607 So. 2d 1119, 1992 Miss. LEXIS 487 (Miss. 1992).

When an injury occurs which is related to the body as a whole, scheduled member standards do not apply; thus, a claimant's injury had to be treated as an injury to the body as a whole where the injury involved not only his arm, but also his upper shoulder and back. Jordan v. Hercules, Inc., 600 So. 2d 179, 1992 Miss. LEXIS 224 (Miss. 1992), but see Dulaney v. National Pizza Co., 733 So. 2d 301, 1998 Miss. App. LEXIS 990 (Miss. Ct. App. 1998).

There was substantial evidence supporting a finding by the Workers' Compensation Commission that a claimant's impairment was a whole body injury rather than a schedule numbered injury only, where a physician identified the claimant's malady as Meniere's Syndrome, and he testified that Meniere's Syndrome is "an inner ear dysfunction that appears to be lifelong in nature" and that it affected the entire body in that, in addition to a loss of hearing, it involved a balance dysfunction affecting the claimant's activities of daily living, both occupationally and socially. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250, 1991 Miss. LEXIS 763 (Miss. 1991).

Generally, "medical" disability is the equivalent of functional disability and relates to actual physical impairment. "Industrial" disability is the functional or medical disability as it affects the claimant's ability to perform the duties of employment. Robinson v. Packard Electric Div., General Motors Corp., 523 So. 2d 329, 1988 Miss. LEXIS 199 (Miss. 1988).

If claimant sustains compensable injury and receives medical treatment until discharged as cured, testimony of doctor discharging claimant may not be sufficient to rebut another doctor who examines claimant at later date and finds patient to remain in disability status, especially where claimant testifies to continued disability from injury, and thus employee with lower back injuries sustained at work was entitled to temporary total disability benefits, where testimony by employee and doctor who last saw him neither conflicted with other medical testimony nor was discredited. Davis v. Scotch Plywood Co., 505 So. 2d 1192, 1987 Miss. LEXIS 2409 (Miss. 1987).

Although workers' compensation claimant is not entitled to compensation benefits during week in which employer pays or causes to be paid to claimant under company benefit plan amount at least as much as worker's compensation otherwise payable; however, employer is not entitled to credit for amount paid in excess of amount required to be paid as worker's compensation, to be applied in reducing compensation payments payable after cessation of payments under benefit plan. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584, 1985 Miss. LEXIS 2197 (Miss. 1985).

If the claimant is paid his usual wages, although he does no work at all following an injury, it is a reasonable inference that the payment is in lieu of compensation and any further compensation should not be allowed. George S. Taylor Constr. Co. v. Harlow, 269 So. 2d 337, 1972 Miss. LEXIS 1220 (Miss. 1972).

The widow of a workman, who sustained a back injury during the course of his employment and who died before the entire amount of the disability award was paid, could not recover unaccrued installments of disability benefits as part of her deceased husband's estate. Southern Brick & Tile Co. v. Clark, 247 So. 2d 692, 1971 Miss. LEXIS 1443 (Miss. 1971).

Since a claim for disability is separate and distinct from a claim for death benefits, the 1960 amendment to subsection (9) of Code 1942, § 6998-02 [now subsection (i) of Code 1972, § 71-3-3], requiring that incapacity and the extent thereof be supported by medical findings, did not eliminate the presumption of causal connection between the employment and death occurring while the employee is engaged in the duties of his employment, particularly since the 1960 amendment did not affect subsection (3) of Code 1942, § 6998-02 [now subsection (c) of Code 1972, § 71-3-3]. L. B. Priester & Son, Inc. v. Bynum, 244 Miss. 185, 137 So. 2d 907, 1962 Miss. LEXIS 438 (Miss. 1962).

One totally disabled from working by a strained back is entitled to compensation although the trouble has not been definitely diagnosed. Wilson v. International Paper Co., 235 Miss. 153, 108 So. 2d 554, 1959 Miss. LEXIS 413 (Miss. 1959).

An award need not use all the terminology of Code 1942, § 6998-09(c)(2) as to the commission's right of future reconsideration. Marley Constr. Co. v. Westbrook, 234 Miss. 710, 107 So. 2d 104, 1958 Miss. LEXIS 541 (Miss. 1958).

Legislature did not purpose and intend to provide greater benefits for permanent partial disability than for death or permanent total disability, and the court in construing the Workmen's Compensation Law should give effect to the legislative purpose and policy although such construction may go beyond the letter of the law. J. F. Crowe Well Servicing Contractor v. Fielder, 224 Miss. 353, 80 So. 2d 29, 1955 Miss. LEXIS 499 (Miss. 1955).

2. Multiple injuries.

Claimant may recover for both injury to back and hand arising out of the same accident because statute contains no exclusiveness provision. General Electric Co. v. McKinnon, 507 So. 2d 363, 1987 Miss. LEXIS 2504 (Miss. 1987).

Various parts of the body may be affected as the result of a single trauma. Rivers Constr. Co. v. Dubose, 241 Miss. 527, 130 So. 2d 865, 1961 Miss. LEXIS 371 (Miss. 1961).

3. Weekly wage.

While the Workers' Compensation Commission did misstate Miss. Code Ann. § 71-3-17(25), the Commission used the post-injury weekly wage to aid in the determination of the employee's loss of earning capacity; therefore, by determining wage-earning capacity and not basing its calculation solely on post-injury wage, the Commission did not commit reversible error on that allegation of error. Nissan N. Am. v. Short, 942 So. 2d 276, 2006 Miss. App. LEXIS 854 (Miss. Ct. App. 2006).

A finding by the Workers' Compensation Commission that an injured manual laborer who was restricted by his doctor to lifting less than 40 pounds suffered only minimal industrial incapacity was not supported by substantial evidence where the decision was based largely on an alleged policy of the employer requiring workers to seek assistance when lifting more than 40 pounds, but the record contained no evidence of such a policy. DeLaughter v. South Cent. Tractor Parts, 642 So. 2d 375, 1994 Miss. LEXIS 367 (Miss. 1994).

A finding by the Workers' Compensation Commission that a lumberyard worker had sustained only a 50 percent loss of wage-earning capacity, and therefore suffered only partial rather than total permanent disability, would be reversed where the evidence indicated that he had difficulty performing "make-work" tasks at his employer's lumberyard after he returned to work and that his efforts to find other employment were unsuccessful, and the Commission's finding was based on the conclusion that the employee should have been able to secure "some type of gainful employment" merely because he had a high school education. Barnes v. Jones Lumber Co., 637 So. 2d 867, 1994 Miss. LEXIS 282 (Miss. 1994).

Where the deceased employee had been paid a total sum of $202.76 in wages, covering the 6-week period of his employment immediately prior to his death, the correct formula for determining the average weekly wage was to divide the total earnings of $202.76 by 6 weeks. Bradshaw v. Rudder, 227 Miss. 143, 85 So. 2d 778, 1956 Miss. LEXIS 665 (Miss. 1956).

4. Wage earning capacity, generally.

Given that a loss of wage-earning capacity is only pertinent to Miss. Code Ann. § 71-3-17(c)(25) with respect to a finding of permanent partial disability, and the worker should have been assessed a loss of wage-earning capacity, if the Workers' Compensation Commission were to find that the worker's disability was permanent and partial, then § 71-3-17(c)(25) would apply, and for permanent and total disability, § 71-3-17(a) would apply, not § 71-3-17(c)(2) as applied by the Commission. Logan v. Klaussner Furniture Corp., — So. 3d —, 2017 Miss. App. LEXIS 474(Miss. Ct. App. Aug. 15, 2017).

Loss of wage earning capacity is only pertinent when a court has found the disability calculation should be governed by criteria other than the limited scheduled-member criteria of Miss. Code Ann. § 71-3-17(c)(1)-(24); § 71-3-17(c)(25)'s use is for that type of condition where there is permanent partial disability and a loss of wage-earning capacity. Logan v. Klaussner Furniture Corp., 238 So. 3d 1166, 2017 Miss. App. LEXIS 474 (Miss. Ct. App. 2017), rev'd, 238 So. 3d 1134, 2018 Miss. LEXIS 126 (Miss. 2018).

Claimant did not suffer a loss of industrial use due to a work-related injury, and, therefore, was not entitled to permanent disability benefits because, although there was no dispute that the claimant suffered from bilateral carpal tunnel syndrome, the claimant was released to regular-duty work with no restrictions and found other, albeit part-time, employment. Parker v. Ashley Furniture Indus., 164 So. 3d 1081, 2015 Miss. App. LEXIS 165 (Miss. Ct. App. 2015).

Finding by the administrative judge of permanent partial disability and loss of wage-earning capacity of 25 percent for the claimant's 1996 back injury was supported by the evidence as this injury did not render the claimant permanently and totally disabled. Instead, the claimant continued to work for the employer for over ten years after suffering the injury. Flowers v. Crown Cork & Seal United States, 168 So. 3d 1009, 2013 Miss. App. LEXIS 388 (Miss. Ct. App. 2013).

Trial court did not err in affirming the decision of the Mississippi Workers' Compensation Commission, which assigned a workers' compensation claimant seeking permanent total benefits under Miss. Code Ann. § 71-3-17 a twenty percent loss of wage-earning capacity because the claimant did not demonstrate that he suffered a permanent total disability since he failed to show a complete loss of wage-earning capacity; the fact that the claimant was terminated from his employment did not entitle him to compensation payments because he admitted he did not contact the employer to keep it informed of his treatment, status, or any restrictions placed upon his employment, and the Commission found that the claimant could have returned to work with the employer in another suitable job, his job-search efforts were less than enthusiastic, and his job-search efforts were wasted since he pursued the same type of employment he had before his injury. Scott v. KLLM, Inc., 37 So. 3d 713, 2010 Miss. App. LEXIS 303 (Miss. Ct. App. 2010).

Pursuant to Miss. Code Ann. § 71-3-17(c)(25), substantial evidence supported the Mississippi Workers' Compensation Commission's (Commission) finding that the employee suffered a loss of wage-earning capacity and its calculation and apportioning of benefits awarded; the Commission properly considered the evidence as a whole, including the employee's loss of access to the job market, her difficulty securing permanent employment and her continuing pain. Neshoba County Gen. Hosp. v. Howell, 999 So. 2d 1295, 2009 Miss. App. LEXIS 37 (Miss. Ct. App. 2009).

Even though the employee failed to report a work-related injury to his treating physicians, the record showed he did report it to his supervisor and the employer's nurse, the nurse having told him that there was no way he could have sustained such a neck injury at work. Further, the Mississippi Workers' Compensation Commission had substantial evidence before it to support its findings based on: (1) the medical records, (2) the opinions of five competent physicians, and (3) the results of various medical tests and procedures. Thus, the Commission's ruling that the employee could not return to work as a mechanic, and that he had incurred a 50 percent loss in his wage-earning capacity, was proper. Bryan Foods, Inc. v. White, 913 So. 2d 1003, 2005 Miss. App. LEXIS 266 (Miss. Ct. App.), cert. denied, 921 So. 2d 344, 2005 Miss. LEXIS 710 (Miss. 2005).

Circuit Court reversed the prior ruling of a 14 percent loss of wage-earning capacity and found that the employee suffered a 30 percent loss of wage-earning capacity, and the employee appealed yet again to the appellate court. The administrative law judge based his finding of a 14 percent loss of wage-earning capacity on a consideration of the employee's age, education, work history, and medical impairment, and the employee had been consistently employed since the injury in other positions at rates of pay not substantially different than what he had previously earned; thus, in finding a 30 percent loss of earning capacity, the circuit court applied an incorrect standard of review by reweighing the evidence presented and reversing the order of the Mississippi Workers' Compensation Commission as to loss of wage-earning capacity. Richards v. Harrah's Entm't, Inc., 881 So. 2d 329, 2004 Miss. App. LEXIS 861 (Miss. Ct. App. 2004).

In determining whether there has been a loss of wage earning capacity, the Mississippi Workers' Compensation Commission is to evaluate training, education, ability to work, failure to be hired elsewhere, pain, and other medical circumstances. Sherwin Williams v. Brown, 877 So. 2d 556, 2004 Miss. App. LEXIS 655 (Miss. Ct. App. 2004).

Because the court found that it was unclear whether the calculation of loss of wage earning capacity in connection with Miss. Code Ann. § 71-3-17(c)(25) was based on evidence, the court remanded for further fact-finding or for the adoption of some other figure that better represented the current evidence. Howard Indus. v. Robinson, 846 So. 2d 245, 2002 Miss. App. LEXIS 574 (Miss. Ct. App. 2002).

Under subsection (c), the award was based solely on the degree of disability to the scheduled member and did not take into account the effect of that disability on the claimant's actual ability to earn wages in her post-injury condition. Weatherspoon v. Croft Metals, Inc., 881 So. 2d 204, 2002 Miss. App. LEXIS 52 (Miss. Ct. App. 2002), rev'd, 853 So. 2d 776, 2003 Miss. LEXIS 197 (Miss. 2003).

A claimant having only a partial impairment to a scheduled member may, through other considerations, establish that, for purposes of his wage earning capacity, the impairment has rendered him or her totally occupationally disabled; in such event, the claimant is entitled to compensation for complete disability under subsection (a). Alumax Extrusions Inc. v. Wright, 737 So. 2d 416, 1998 Miss. App. LEXIS 1114 (Miss. Ct. App. 1998).

The extent of loss or impairment of earning capacity is a factual question for the commission to be determined on the basis of wage earning capacity in the same employment or otherwise, and an award could not be predicated upon a finding that a claimant had suffered a total and permanent loss of wage earning capacity in that she could no longer do the work of a nurse's aid, where no showing was made that she had made an effort to obtain other employment. Compere's Nursing Home v. Biddy, 243 So. 2d 412, 1971 Miss. LEXIS 1511 (Miss. 1971).

Loss of wage-earning capacity is determinable by a reasonable exercise of the commission's discretion. Southeastern Constr. Co. v. Dependent of Dodson, 247 Miss. 1, 153 So. 2d 276, 1963 Miss. LEXIS 277 (Miss. 1963).

While earnings after injury are not necessarily determinative of earning capacity, they are of evidential value. Hale v. General Box Mfg. Co., 235 Miss. 301, 108 So. 2d 844, 1959 Miss. LEXIS 430 (Miss. 1959).

That disability may have been aggravated by the onset of disease, as to the nature of which medical experts are in disagreement, does not affect the right to compensation for loss of earning power resulting from the injury. Hale v. General Box Mfg. Co., 235 Miss. 301, 108 So. 2d 844, 1959 Miss. LEXIS 430 (Miss. 1959).

After physical disability has been shown, it is for the commission to determine the extent of loss of wage-earning capacity. Hale v. General Box Mfg. Co., 235 Miss. 301, 108 So. 2d 844, 1959 Miss. LEXIS 430 (Miss. 1959).

The fact that the employer had continued to pay claimant the same weekly wages that he had been receiving prior to his injury did not mean that the claimant had not sustained a permanent partial disability in his wage earning capacity. Harper Foundry & Machine Co. v. Harper, 232 Miss. 873, 100 So. 2d 779, 1958 Miss. LEXIS 342 (Miss. 1958).

The statute does not test the earning capacity of a claimant by the comparative wages received by him before and after the injury, but benefits are figured on a percentage of the claimant's average weekly wages at the time of the injury as compared to his wage earning capacity thereafter in the same employment or otherwise. Harper Foundry & Machine Co. v. Harper, 232 Miss. 873, 100 So. 2d 779, 1958 Miss. LEXIS 342 (Miss. 1958).

In determining the loss of wage earning capacity, the statutory test is calculated by comparing actual earnings before the injury with the earning capacity after the injury. Russell v. Southeastern Utilities Service Co., 230 Miss. 272, 92 So. 2d 544, 1957 Miss. LEXIS 368 (Miss. 1957).

In determining the loss of wage earning capacity by a claimant, the workmen's compensation commission must make the best estimate of future impairment of earnings on the strength of both actual post-injury earnings and any other evidence of probative value on the issue of earning capacity, which is essentially a question of fact for the commission. Russell v. Southeastern Utilities Service Co., 230 Miss. 272, 92 So. 2d 544, 1957 Miss. LEXIS 368 (Miss. 1957).

While earnings equal to preinjury earnings are strong evidence of nonimpairment of earning capacity, this is not conclusive, and may be rebutted by evidence independently showing or explaining away the post-injury earnings as an unreliable basis of estimating wage earning capacity. Russell v. Southeastern Utilities Service Co., 230 Miss. 272, 92 So. 2d 544, 1957 Miss. LEXIS 368 (Miss. 1957).

The degree of a claimant's disability is calculated by comparing actual earnings before the injury with earning capacity after the injury. King v. Westinghouse Electric Corp., 229 Miss. 830, 92 So. 2d 209, 1957 Miss. LEXIS 584 (Miss. 1957).

Where a referee denied a claim for partial permanent disability because the claimant had higher weekly earnings after injury than before injury and where referee did not hear the evidence relating to increase in wage levels since the accident, or as to whether higher wage resulted from claimant's enlarged experience or from sympathy of employer, or the result of enlarged experience of the claimant, the matter should be remanded for reconsideration. Karr v. Armstrong Tire & Rubber Co., 216 Miss. 132, 61 So. 2d 789, 1953 Miss. LEXIS 616 (Miss. 1953).

Where a welder's helper received higher weekly wage after injury than he was receiving at the time of injury, that fact was not in itself determinative of question of whether his partial loss of voice had so impaired his wage earning capacity as to be compensable. Karr v. Armstrong Tire & Rubber Co., 216 Miss. 132, 61 So. 2d 789, 1953 Miss. LEXIS 616 (Miss. 1953).

5. — Efforts to gain employment.

Mississippi Workers' Compensation Commission found that although a claimant could not resume work in her preinjury employment, she had not made sufficient efforts to obtain other employment to meet the definition of "disability" under Miss. Code Ann. § 71-3-3(I) because her search for other employment was not reasonable, and the Commission only awarded permanent partial disability benefits under Miss. Code Ann. § 71-3-17(c). The Commission's decision was supported by substantial evidence, and it was the Commission's to make, and in reversing the Commission's decision and awarding the claimant permanent, total disability under Miss. Code Ann. § 71-3-17(a), the circuit court improperly invaded the Commission's decision-making authority. Lifestyle Furnishings v. Tollison, 985 So. 2d 352, 2008 Miss. App. LEXIS 182 (Miss. Ct. App. 2008).

Employee was properly denied permanent partial disability benefits under Miss. Code Ann. § 71-3-17(c)(25) for failure to conduct the required job search effort because even assuming that the employee's endeavor to perform yard work for a friend constituted a job search, that one attempt at securing alternative employment was insufficient to demonstrate a permanent partial disability. Chestnut

v. Dairy Fresh Corp., 966 So. 2d 868, 2007 Miss. App. LEXIS 702 (Miss. Ct. App. 2007).

Reasonableness of a workers' compensation claimant's efforts to gain employment includes consideration of job availability and economics in the community, the claimant's skills and background, and the nature of the disability. Sherwin Williams v. Brown, 877 So. 2d 556, 2004 Miss. App. LEXIS 655 (Miss. Ct. App. 2004).

6. —Burden of proof.

Decision of the Mississippi Workers' Compensation Commission that a county rebutted the prima facie showing of permanent total disability was not supported by substantial evidence because the record failed to support a finding that an employee suffered only a permanent partial disability or no loss of wage-earning capacity; the medical testimony showed the employee had sustained permanent impairment. Harris v. Stone Cty. Bd. of Supervisors, 270 So. 3d 989, 2018 Miss. App. LEXIS 469 (Miss. Ct. App. 2018).

Employee did not suffer a permanent and total occupational disability because he continued to work at a service station earning $200 per week and his reduced earnings were limited in part by a heart attack that was not work related and by his inability to find transportation; the employee's work injury was to his left foot, and the employee did not demonstrate under Miss. Code Ann. § 71-3-17(a) that his injuries, when considered in the context of other relevant circumstances, rendered him totally occupationally disabled from any form of gainful employment. McDowell v. Smith, 856 So. 2d 581, 2003 Miss. App. LEXIS 561 (Miss. Ct. App. 2003).

There was no dispute that the employee suffered some injury to her back while on duty with her employer, and there was no real issue as to whether the employee suffered from medical complaints that required substantial attention from treating physicians; however, the employee was unable to provide convincing evidence showing that her medical complaints were caused by the incident at work. Smith v. Grand Casino-Biloxi, 851 So. 2d 423, 2003 Miss. App. LEXIS 670 (Miss. Ct. App. 2003).

An award of permanent partial disability benefits was proper where the claimant was medically certified to be 15 percent permanently disabled, but was able to perform work at his former job. The fact that a claimant has secured some form of employment does not, by itself, negate the claimant's case for compensation; if, because of the subject injury, the claimant cannot secure employment at pre-injury pay, then the claimant may be entitled to disability payments. A claimant is not required to prove that he or she had actually been rejected, because of his or her disability, at jobs for which the claimant has stated he or she no longer considers himself or herself a qualified applicant. Thus, it was enough that the Workers' Compensation Commission, affirmed by the circuit court, found that the claimant did sustain an injury leading to a disability which had diminished his wage-earning capacity, and that he had reasonably attempted to find employment. Georgia Pacific Corp. v. Taplin, 586 So. 2d 823, 1991 Miss. LEXIS 664 (Miss. 1991).

A claimant who suffered a 25 percent permanent impairment to the body was not entitled to an award of permanent partial disability benefits since she did not establish a loss of wage earning capacity attributable to the compensable injury, where the evidence showed that she experienced an overall increase of post-injury wages and she offered no proof to rebut the presumption of no loss of wage earning capacity by showing that the post-injury earnings were not reliable in determining wage earning capacity. International Paper Co. v. Kelley, 562 So. 2d 1298, 1990 Miss. LEXIS 274 (Miss. 1990).

A claimant was improperly awarded permanent partial disability benefits for loss of wage earning capacity, even though her incapacity to return to her job in the pasting department of a luggage company or to engage in similar employment was supported by medical findings, where the claimant did not meet her burden of proving that she had attempted to secure a job in another or different trade after her disability had subsided, and where her physician had testified that she could return to any factory-type work, so long as the environmental conditions were "clean." Sardis Luggage Co. v. Wilson, 374 So. 2d 826, 1979 Miss. LEXIS 2392 (Miss. 1979).

The burden is upon the claimant not only to show loss of wage earning capacity but also to show the extent thereof, and the claimant who has established his injury and the loss of wage earning capacity but has failed to prove the extent thereof has provided no substantial evidence to support the findings of the commission that he was entitled to temporary total benefits for the full period allowed. American Potash & Chemical Corp. v. Rea, 228 So. 2d 867, 1969 Miss. LEXIS 1405 (Miss. 1969).

7. —Presumption.

Rebuttable presumption of no loss of wage-earning capacity arose because the worker's post-injury wages were equal to or exceeded her pre-injury wages. Lovett v. Delta Reg'l Med. Ctr., 157 So. 3d 90, 2014 Miss. App. LEXIS 235 (Miss. Ct. App. 2014).

An injury to the back is not of the type scheduled in subsections (c)(1) through (24), so that proof of permanent diminished physical capacity, standing alone, does not entitle a claimant to compensation. Napier v. Franklin Mfg. Co., 797 So. 2d 1032, 2001 Miss. App. LEXIS 154 (Miss. Ct. App. 2001).

Presumption of no loss of wage earning capacity, which arises where claimant's post-injury earnings equal or exceed pre-injury earnings, was effectively rebutted, where claimant testified that his position was temporary and his pay higher than at time of injury because labor union required that one working in his position receive same pay as absent employee, and that upon return of that person he would be out of job; while statute has been construed by Court to mean that post-injury earnings equal to or in excess of pre-injury earnings are strong evidence of non-impairment of earning capacity, that presumption may be rebutted by evidence on part of claimant that post-injury earnings are unreliable due to: increase in general wage levels since time of accident, claimant's own greater maturity and training, longer hours worked by claimant, payment of wages disproportionate to capacity out of sympathy to claimant, and temporary and unpredictable character of post-injury earnings, which is not exclusive list of reasons. General Electric Co. v. McKinnon, 507 So. 2d 363, 1987 Miss. LEXIS 2504 (Miss. 1987).

Earnings equal to preinjury earnings create a presumption of earning capacity commensurate with actual post-injury earnings, but such presumption may be rebutted by evidence independently showing incapacity, or by evidence showing that post-injury earnings are not a reliable basis for estimating earning capacity, as for example, evidence of general wage increases since the injury, or evidence as to the temporary or unpredictable character of post-injury earnings. Cox v. International Harvester Co., 221 So. 2d 924, 1969 Miss. LEXIS 1509 (Miss. 1969).

Post-injury earnings equal to or in excess of pre-injury earnings are strong evidence of non-impairment of earning capacity, but the presumption arising therefrom may be rebutted by evidence on part of the claimant that the post-injury earnings are unreliable due to increase in general wage levels, claimant's own greater maturity and training, longer hours worked by claimant after accident, payment of wages disproportionate to capacity out of sympathy to complainant, and the temporary and unpredictable character of post-injury earnings. Wilcher v. D. D. Ballard Constr. Co., 187 So. 2d 308, 1966 Miss. LEXIS 1345 (Miss. 1966).

8. —Disability percentage not indicative of reduction in earning capacity.

The workmen's compensation commission was in error in predicating an award of permanent partial disability upon its finding that there had been a 10 percent medical disability to the claimant's body as a whole, rather than upon a determination of the extent of loss or impairment of the claimant's wage earning capacity resulting from a compensable injury to her lower back. Compere's Nursing Home v. Biddy, 243 So. 2d 412, 1971 Miss. LEXIS 1511 (Miss. 1971).

Loss of earning power as the result of an injury is not necessarily proportional to the bodily functional disability. Hale v. General Box Mfg. Co., 235 Miss. 301, 108 So. 2d 844, 1959 Miss. LEXIS 430 (Miss. 1959).

Where there was a stipulation that the claimant suffered 25 percent partial permanent disability and that such rating of disability was to constitute basis for decision, this stipulation would not be construed to mean an agreement that 25 percent disability was to be taken as 25 percent disability in claimant's earning capacity. Elliott v. Ross Carrier Co., 220 Miss. 86, 70 So. 2d 75, 1954 Miss. LEXIS 412 (Miss. 1954).

9. — Particular cases; no loss in earning capacity.

Evidence supported the finding that the worker suffered no loss of wage-earning capacity, after weighing the reasonableness of the worker's job search; there was testimony that there were 25 jobs for the worker in the area, and she failed to seek her old position or reapply for any other position after her stroke, and the decision to deny permanent disability benefits was supported by the evidence. Lovett v. Delta Reg'l Med. Ctr., 157 So. 3d 90, 2014 Miss. App. LEXIS 235 (Miss. Ct. App. 2014).

Decision that an injured employee was not due additional temporary disability benefits was supported by substantial evidence because she was offered a job by the city within her lifting restrictions, her salary was equal to her prior salary, the employee ultimately failed to return to work, and her attempts to find employment were unsuccessful. Herbert v. City of Horn Lake, 138 So. 3d 943, 2013 Miss. App. LEXIS 643 (Miss. Ct. App. 2013).

Mississippi Workers' Compensation Commission erred by declaring that a claimant's permanent total disability benefits related back to the date of injury, as he was not "disabled" on that date because he was able to continue to work thereafter. Eaton Corp. v. Brown, 130 So. 3d 1131, 2013 Miss. App. LEXIS 344 (Miss. Ct. App. 2013), cert. denied, 131 So. 3d 578, 2014 Miss. LEXIS 80 (Miss. 2014).

Court of appeals erred in finding that an employee made a prima facie showing of permanent total disability and in awarding her compensation because the substantial evidence supported a finding that the employee did not have a permanent, total disability, and there was substantial evidence that the lack of employment was not due to the employee's injury; the employee's termination notice stated that she was being terminated due to her probationary status rather than as a consequence of her injury, and the Mississippi Workers' Compensation Commission's conclusion that the employee was unable to find employment due to the depressed economic conditions in the area where she lived and not to the injury itself was based on substantial evidence presented by the employee's expert. he employee was terminated from her position with the group home shortly after her accident. Lott v. Hudspeth Ctr., 26 So. 3d 1044, 2010 Miss. LEXIS 11 (Miss. 2010).

Workers' compensation claimant was not entitled to permanent partial disability benefits where he failed to demonstrate that his post-injury earnings were temporary or unpredictable; his wages had steadily increased since his job with the employer, and he had not been unemployed for any significant period of time after his termination. Mosby v. Farm Fresh Catfish Co., 19 So. 3d 789, 2009 Miss. App. LEXIS 669 (Miss. Ct. App. 2009).

Employee was properly denied disability benefits for carpal tunnel syndrome because all three doctors who had examined the employee testified that the employee could perform the duties of a rivet-machine operator post-injury; two doctors opined that the employee should have no work restrictions, and the third doctor stated that he had no problem with a three-pound lifting restriction, which was more than the heaviest part the employee would have to lift as a rivet-machine operator. Wooten v. Franklin Corp., 9 So. 3d 1182, 2009 Miss. App. LEXIS 207 (Miss. Ct. App. 2009).

Modified award of temporary total disability benefits was appropriate in a case where a benefits claimant injured his arm because the time following surgery was the only time that the injury prevented him from earning wages; but for his unrelated firing, the claimant could have been working. Lankford v. Rent-A-Center, Inc., 961 So. 2d 774, 2007 Miss. App. LEXIS 470 (Miss. Ct. App. 2007).

Employee's recent jobs, activities and education constituted substantial evidence to support the Workers' Compensation Commission's finding of a less than a total loss of use; the employee did not demonstrate a loss of wage-earning capacity, which was a factor in whether or not occupational disability was greater than the medical loss of use would indicate. Meridian Prof'l Baseball Club v. Jensen, 828 So. 2d 740, 2002 Miss. LEXIS 299 (Miss. 2002).

A claimant was not entitled to permanent total disability benefits, even though his neurosurgeon and his chiropractor found him to be totally disabled, where the claimant continued to work full time for his employer and therefore showed no loss of wage earning capacity as a result of his injuries. Lanterman v. Roadway Express, Inc., 608 So. 2d 1340, 1992 Miss. LEXIS 564 (Miss. 1992).

A commission finding that a claimant, who suffered a back injury and was said to have sustained a permanent partial disability of 10 to 15% to the body as a whole, had not sustained an impairment of his earning capacity was sufficiently supported by the claimant's post-injury history of steady employment at substantially increased earnings for a five-year period. Smith v. Picker Service Co., 240 So. 2d 454, 1970 Miss. LEXIS 1294 (Miss. 1970).

Where there was medical testimony to the effect that a claimant, who suffered an accidental injury in the nature of a myocardial infarction in the course of his employment, would be able to and should engage in some work but would have to take precautions to work at a more deliberate pace than prior to his injury and should work only the minimum time necessary to make a living, but other proofs showed that the claimant was doing the same type of work as before the accident and was earning more wages, the evidence supported the finding of the commission that the claimant had not suffered a loss of his wage-earning capacity. Cox v. International Harvester Co., 221 So. 2d 924, 1969 Miss. LEXIS 1509 (Miss. 1969).

10. — — Loss in earning capacity demonstrated.

Award of permanent disability benefits was supported by substantial evidence because after reviewing an employee's age, education, work history, and physical restrictions, it was apparent that the employee had suffered a loss in wage-earning. Omnova Solutions, Inc. v. Lipa, 44 So. 3d 1000, 2009 Miss. App. LEXIS 132 (Miss. Ct. App. 2009).

Workers' compensation benefits claimant was entitled to permanent total disability benefits under Miss. Code Ann. § 71-3-17(a) where she provided documentation that she had made 194 attempts to find another job, and there was no substantial evidence showing that the claimant's efforts were a sham, less than reasonable, or without proper diligence. Lott v. Hudspeth Ctr., 26 So. 3d 1057, 2008 Miss. App. LEXIS 597 (Miss. Ct. App. 2008), rev'd, 26 So. 3d 1044, 2010 Miss. LEXIS 11 (Miss. 2010).

Award of permanent total disability benefits to the employee for 450 weeks under Miss. Code Ann. § 71-3-17(a) was proper in part because job search efforts undertaken by the employee were reasonable and not a mere sham; substantial evidence existed to support a finding that the employee sustained a total loss of wage earning capacity. Adolphe Lafont USA, Inc. v. Ayers, 958 So. 2d 833, 2007 Miss. App. LEXIS 417 (Miss. Ct. App. 2007).

There was no error in awarding a benefits claimant permanent partial disability under Miss. Code Ann. § 71-3-17(c)(25) because the claimant's age, training, education, and work restrictions were taken into account in setting her wage loss earning capacity; moreover, her refusal to relocate to another state for sedentary work was not unreasonable. AirTran, Inc. v. Byrd, 953 So. 2d 296, 2007 Miss. App. LEXIS 198 (Miss. Ct. App. 2007).

Determination that an employee sustained a 50 percent industrial loss of use in her right arm and award of permanent partial disability benefits was affirmed because, inter alia: (1) the Mississippi Workers' Compensation Commission properly considered a variety of evidence in determining that the employee suffered a loss of wage-earning capacity and a 50 percent industrial loss of use to her right upper extremity; and (2) the Commission's decision to award the employee benefits for permanent partial disability was supported by substantial evidence, including the treating physician's restrictions on the employee and the employee's testimony. Levi Strauss & Co. v. Studaway, 930 So. 2d 481, 2006 Miss. App. LEXIS 427 (Miss. Ct. App. 2006).

Substantial evidence supported the finding of the Mississippi Worker's Compensation Commission that the employee, a 61-year-old heavy equipment operator, was permanently and totally disabled due to spinal stenosis and related complications and that he had suffered a total loss of wage-earning capacity. While the medical evidence was in dispute as to whether he had suffered a total or partial permanent injury, it was a dispute to be resolved by the Commission; the Commission chose to credit a primary treating physician's assessment that the employee could not hold any type job, and that assessment was corroborated by the employee's testimony as well as the employer's statement to the Mississippi Public Employees Retirement System that the employee was totally disabled. Pike County Bd. of Supervisors v. Varnado, 912 So. 2d 477, 2005 Miss. App. LEXIS 233 (Miss. Ct. App.), cert. denied, 921 So. 2d 344, 2005 Miss. LEXIS 668 (Miss. 2005).

Where a 60-year old employee suffered several fractures to his hip in addition to compression of his L-4 vertebra and could no longer withstand the duties of longhaul trucking, ample evidence existed to support the Mississippi Workers' Compensation Commission's finding that he suffered a loss of wage earning capacity of $ 400 per week. The undisputed testimony demonstrated that he earned half of his regular salary as a longhaul truck driver while driving short hauls or working in the loading and packing divisions, and that he had sought light duty work from both his employer and his union, but that none was offered; thus, an award of permanent partial disability benefits was proper. Alumax Extrusions, Inc. v. Hankins, 902 So. 2d 586, 2004 Miss. App. LEXIS 957 (Miss. Ct. App. 2004).

Employee who received medical treatment after suffering pain in his hip while carrying a roll of carpet up a staircase was entitled to permanent, total disability benefits. He suffered a 10 percent permanent partial rating and faced limited employment options; and therefore suffered a loss in earning capacity. Sherwin Williams v. Brown, 877 So. 2d 556, 2004 Miss. App. LEXIS 655 (Miss. Ct. App. 2004).

Workers' Compensation Commission's award of compensation for permanent partial disability due to partial loss of scheduled members took no account of the worker's loss of wage earning capacity, and the employer failed to rebut the presumption of total occupational loss of members by proof of the worker's ability to earn the same wages she was receiving at the time of her injury. McDonald v. I. C. Isaacs Newton Co., 879 So. 2d 486, 2004 Miss. App. LEXIS 157 (Miss. Ct. App.), cert. denied, 882 So. 2d 234, 2004 Miss. LEXIS 988 (Miss. 2004).

Workers' compensation claimant successfully rebutted the presumption of no loss of wage earning capacity that arose because claimant was earning more than at the time of claimant's injury, and although the 55 percent loss of earning capacity figure adopted by the Mississippi Workers' Compensation Commission was originally an arbitrary figure chosen by claimant's attorney, the commission's acceptance of that figure was found to have been knowing and intentional. Greenwood Utils. v. Williams, 801 So. 2d 783, 2001 Miss. App. LEXIS 509 (Miss. Ct. App. 2001).

Evidence was sufficient to support the administrative law judge's finding that the claimant was entitled to temporary total disability benefits based on his finding that the claimant's coronary artery disease was job-related; a physician testified that he did not think the claimant should continue to work as the stress on his job made his condition worse, notwithstanding contrary testimony from two other physicians. City of Laurel v. Blackledge, 1999 Miss. App. LEXIS 333 (Miss. Ct. App. June 22, 1999), sub. op., 755 So. 2d 573, 2000 Miss. App. LEXIS 88 (Miss. Ct. App. 2000).

Despite a claimant's increase in earnings, his earning capacity and his employability in the market place had been reduced due to Meniere's Syndrome where the presumption of earning capacity commensurate with post-injury earnings was rebutted by the following factors: (1) Meniere's Syndrome is a whole body disability; (2) it is lifelong in nature; (3) it affects the activities of daily living, both occupationally and socially; (4) the claimant's daily bouts with vertigo would put him at a disadvantage in an industrial setting where there were machines in operation; (5) one of the claimant's biggest fears was losing his balance and falling into one of the machines he was operating; and (6) there had been an increase in general wage levels for all employees in the claimant's class since 1984. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250, 1991 Miss. LEXIS 763 (Miss. 1991).

Where claimant has a disability which prevented him from performing some of the duties incidental to his occupation as a welder, and diminished his capacity for earning wages in that occupation, compensation could not be denied because, due to the generosity of his employer, he had suffered no loss of pay up to the time of the hearing. O'Neal v. Multi-Purpose Mfg. Co., 243 Miss. 775, 140 So. 2d 860, 1962 Miss. LEXIS 407 (Miss. 1962).

Where it was shown that although a claimant's post-injury earnings following his maximum possible medical recovery had equalled or slightly exceeded his pre-injury earnings, such earnings had been possible through the action of a sympathetic union rather than to his actual capacity due to work assigned to him, there was substantial evidence to support the commission's finding that the claimant had suffered a 50 percent loss in wage earning capacity. Russell v. Southeastern Utilities Service Co., 230 Miss. 272, 92 So. 2d 544, 1957 Miss. LEXIS 368 (Miss. 1957).

11. Amount of recovery.

In a case in which the claimant was awarded permanent partial disability benefits for his work-related injury, the Mississippi Workers' Compensation Commission's award of $81.38 per week for 450 weeks was proper as the claimant sustained a 20% loss of wage-earning capacity compared to his stipulated pre-injury average weekly wage; and the Commission's calculations equated to $610.35 x 20% = 122.07 x .6667 = $81.38. Chambers v. Howard Indus., 310 So. 3d 833, 2021 Miss. App. LEXIS 13 (Miss. Ct. App. 2021).

Reduction in the employee's award of permanent-partial disability benefits was improper because she chose to demonstrate that she could not perform the substantial acts of her usual employment and thus, the fact that she did not seek employment with the employer or any other company was not conclusive of whether she was entitled to permanent-partial disability benefits for the industrial loss of use of her leg, Miss. Code Ann. § 71-3-17(c). Further, based on her injury and her restrictions, the employee was unable to perform the substantial acts of her usual employment in food service and as a caretaker. Cole v. Ellisville State Sch., 59 So. 3d 612, 2010 Miss. App. LEXIS 566 (Miss. Ct. App. 2010), cert. denied, 58 So. 3d 693, 2011 Miss. LEXIS 211 (Miss. 2011).

Finding in favor of the employee in his workers' compensation action was proper pursuant to Miss. Code Ann. §§ 71-3-17(c)(25), 71-3-37(5), and 71-3-15, where the employee offered medical proof that the injury manifested its symptoms in an area other than that of the initial impact; further, the computation of disability benefits totaled one cent less than the amount awarded by the administrative judge and the appellate court did not find a one-cent rounding error difference arbitrary or capricious, Miss. Code Ann. § 71-3-17(25). Cives Steel Co. Port of Rosedale v. Williams, 905 So. 2d 661, 2004 Miss. App. LEXIS 505 (Miss. Ct. App. 2004).

A claimant cannot pyramid both compensation under subsection (a) for total loss of wage earning capacity and compensation under subsection (c) for total loss of an arm. Hollingsworth v. I.C. Isaacs & Co., 725 So. 2d 251, 1998 Miss. App. LEXIS 1019 (Miss. Ct. App. 1998).

The evidence was sufficient to support a finding of July 8, 1988, as the date of an employee's maximum medical recovery from a leg injury, where the employee's treating physician had initially indicated that the employee had reached maximum medical recovery on August 27, 1987 when he was originally released to return to work, but the physician subsequently stated that the employee did not reach maximum medical recovery until July 8, 1988 because the employee continued to suffer from swelling and pain following the August release and the physician continued reassessment and treatment in the hope that the employee's condition would improve. McGowan v. Orleans Furniture, Inc., 586 So. 2d 163, 1991 Miss. LEXIS 596 (Miss. 1991).

Where substantial evidence establishes a causal connection between claimant's surgery for repair of a hernia and the physical discomforts and disabilities suffered since that time, a claimant is not necessarily limited to the specific award for hernia alone. Knight v. Stachel, 193 So. 2d 593, 1967 Miss. LEXIS 1554 (Miss. 1967).

Temporary total disability extends only during its continuance and until maximum medical recovery. Arender v. National Sales, Inc., 193 So. 2d 579, 1966 Miss. LEXIS 1289, 1967 Miss. LEXIS 1552 (Miss. 1966).

Where the employee, an unskilled laborer, suffered a ruptured disc from picking up a 60 pound bag of sugar, the commission concluded properly that he had suffered a loss of wage earning capacity in the amount of $18 per week or a loss of approximately 271/2 percent. Malone & Hyde of Tupelo, Inc. v. Kent, 250 Miss. 879, 168 So. 2d 526, 1964 Miss. LEXIS 515 (Miss. 1964).

The right to medical expenses continues after expiration of the maximum benefit period or the payment of the maximum amounts of weekly benefits. J. H. Moon & Sons v. Hood, 244 Miss. 564, 144 So. 2d 782, 1962 Miss. LEXIS 477 (Miss. 1962).

The minimum award which may be made for permanent partial disability is that fixed by Code 1942, § 6998-07. Wiygul Motor Co. v. Pate, 237 Miss. 325, 115 So. 2d 51, 1959 Miss. LEXIS 392 (Miss. 1959).

An award of temporary benefits is a continuing one from the date of the commission's order during the continuance of temporary disability. Komp Equipment Co. v. Clinton, 236 Miss. 560, 112 So. 2d 541, 1959 Miss. LEXIS 351 (Miss. 1959).

Where it was undisputed that claimant became totally and permanently disabled July the 26th, 1955, the date of the injury, the order of the commission should have awarded total permanent disability compensation benefits from that date for 450 weeks, but not to exceed $8,600, whichever was less. Nicholas Co. v. Dodson, 232 Miss. 569, 99 So. 2d 666, 1958 Miss. LEXIS 304 (Miss. 1958).

To warrant payment of compensation as for the loss of an eye, the loss of vision must aggregate 80 percent or more, whether binocular or other vision, so that a claimant, whose loss of visual acuity, combined with the loss of binocular vision in extreme field of vision beyond 35 degrees, resulted in an overall 60 percent loss of an eye, was entitled to compensation for only 60 weeks. White v. R. C. Owen Co., 232 Miss. 268, 98 So. 2d 650, 1957 Miss. LEXIS 468 (Miss. 1957).

Where claimant suffered a heart attack while in the employment and his heart condition was diagnosed as a coronary occlusion resulting in a myocardial infarction causing a 50 percent permanent partial disability, the over-all maximum award should be limited to Mississippi Products, Inc. v. Gordy, 224 Miss. 690, 80 So. 2d 793, 1955 Miss. LEXIS 532 (Miss. 1955).

A carpenter who suffered a broken bone in the leg in the course of employment and had lost the use of the leg, was entitled to 175 weeks which was the maximum period for which recovery was permitted on that account. M. T. Reed Const. Co. v. Martin, 215 Miss. 472, 61 So. 2d 300, 1952 Miss. LEXIS 588 (Miss. 1952), overruled, Smith v. Jackson Constr. Co., 607 So. 2d 1119, 1992 Miss. LEXIS 487 (Miss. 1992).

In computing compensation benefits to a widow the probability of remarriage before the expiration of the 450 weeks during which the widow is entitled to compensation must be taken into account. United States Fidelity & Guaranty Co. v. Smith, 211 Miss. 573, 52 So. 2d 351, 1951 Miss. LEXIS 389 (Miss. 1951).

12. Loss of or injury to scheduled members.

Mississippi Workers' Compensation Commission's award of permanent partial disability benefits to the claimant due to the loss of use of his right upper extremity was upheld because the Commission's finding that the claimant could no longer perform the substantial acts of his usual occupation was supported by substantial evidence, as the claimant testified that every job he had performed over the last eight years required lifting 50 pounds occasionally and according to his medical restrictions he was only capable of occasionally lifting 18.5 pounds. Mueller Indus. v. Waits, 283 So. 3d 1137, 2019 Miss. App. LEXIS 142 (Miss. Ct. App.), cert. denied, — So. 3d —, 2019 Miss. LEXIS 470 (Miss. 2019), cert. denied, 283 So. 3d 734, 2019 Miss. LEXIS 410 (Miss. 2019).

The medical and vocational proof rebutted any presumption as to a claimant's alleged total industrial loss of use to the right upper extremity because the claimant's post-injury employment with the employer demonstrated that the claimant could perform some of the substantial acts of the claimant's usual employment, a vocational expert testified about the job opportunities that were available to the claimant, and the claimant did not demonstrate an incapacity post-injury to earn the same wages as the claimant was earning pre-injury. Hathorn v. ESCO Corp., 224 So. 3d 543, 2016 Miss. App. LEXIS 739 (Miss. Ct. App. 2016), cert. denied, 223 So. 3d 785, 2017 Miss. LEXIS 307 (Miss. 2017).

Mississippi Workers' Compensation Commission did not err in awarding an employee temporary total disability benefits and permanent partial disability benefits because it considered all the necessary factors before finding that the employee was entitled to an industrial loss, and there was no error of law or unsupported fact; the Commission found that the employee had demonstrated a loss of industrial use in excess of her functional loss. Sanderson Farms, Inc. v. Jessie, 185 So. 3d 397, 2015 Miss. App. LEXIS 373 (Miss. Ct. App.), cert. denied, 178 So. 3d 729, 2015 Miss. LEXIS 557 (Miss. 2015).

Mississippi Workers' Compensation Commission did not err in awarding an employee compensation for a fifty percent functional loss for industrial purposes of both upper extremities because substantial evidence supported its decision that the employee demonstrated a loss of industrial use in excess of her functional loss. Sanderson Farms, Inc. v. Jessie, 2015 Miss. App. LEXIS 97 (Miss. Ct. App. Mar. 3, 2015).

In a workers' compensation case, since it was uncontradicted that a benefits claimant was assigned a two percent impairment to her lower right extremity, she was entitled to receive permanent partial disability for the two percent impairment to a scheduled member, her right lower extremity, in accordance with this statute. Lovett v. Delta Reg'l Med. Ctr., 157 So. 3d 88, 2015 Miss. LEXIS 50 (Miss. 2015).

Trial court erred in upholding a 100 percent industrial loss for an employee's leg injury because the evidence did not support such a finding under Miss. Code Ann. § 71-3-17(c); the employee's leg only had a 25 percent medical impairment, the employee continued to work in the field of law enforcement, and the employee earned $ 10,000 more a year in a new position than at the time of the injury. City of Laurel v. Guy, 58 So. 3d 1223, 2011 Miss. App. LEXIS 181 (Miss. Ct. App. 2011).

Claimant is entitled to benefits based on total loss of use of a scheduled member if it is shown that the person is no longer able to perform the customary acts of that person's usual employment; the job held at the time of the claimant's injury was not necessarily the usual employment, but rather, the usual employment was broader in scope than the job held at the time of injury, and included jobs in which the claimant had past experience, jobs requiring similar skills, or other jobs for which the worker was suited, such that there was substantial evidence to rebut a presumption of total occupational loss and deny the claimant's sympathy wages argument. Walker v. Delta Steel Bldgs., 878 So. 2d 113, 2003 Miss. App. LEXIS 960 (Miss. Ct. App. 2003).

Workers' compensation award based on diminished wage-earning capacity rather than a scheduled member injury to the arms under Miss. Code Ann. § 71-3-17(c) was affirmed because there was substantial evidence supporting the factual conclusion that the symptoms of pain manifested themselves in the neck and shoulder area, the mere fact that the employee's use of his upper extremities in certain ways acted as a triggering mechanism for the disabling pain he experienced in his neck, shoulders, and upper back did not transform his claim into a scheduled member injury, and there was no proof that the employee's physical complaints related directly to his arms rather than his neck and shoulders. Arendale v. Balkamp, Inc., 879 So. 2d 448, 2003 Miss. App. LEXIS 892 (Miss. Ct. App. 2003).

Workers' compensation statutes guaranteed a measure of compensation to an injured worker who suffered a permanent impairment to a scheduled member as the result of a work-related injury, and the claimant's injury to both hands qualified as a scheduled member under the statute; moreover the measure of compensation guaranteed was in spite of the fact that the claimant appeared to have suffered no loss of wage-earning capacity. Ard v. Marshall Durbin Cos., 2001 Miss. App. LEXIS 540 (Miss. Ct. App. Dec. 18, 2001), sub. op., 818 So. 2d 1240, 2002 Miss. App. LEXIS 326 (Miss. Ct. App. 2002).

The determination for permanent partial disability benefits for the industrial loss of the use of a scheduled member does not encompass an identification of wage earning capacity, but rather a determination of functional loss of use presented by medical evidence and the impact that the loss of function has on the worker's ability to perform the normal and customary duties associated with the claimant's usual employment; thus, evidence regarding a claimant's post-injury wage earnings is not relevant to such a determination. McCarty Farms, Inc. v. Banks, 773 So. 2d 380, 2000 Miss. App. LEXIS 290 (Miss. Ct. App. 2000).

The measure of compensation to an injured worker who suffers a permanent functional impairment to a scheduled member as the result of a work-related injury and the impact that the loss of function of the particular scheduled member has on the worker's ability to perform the normal and customary duties associated with her usual employment, called the degree of industrial disability, is a question of fact to be determined from the evidence. Robinette v. Henry I. Siegal Co., 801 So. 2d 739, 2000 Miss. App. LEXIS 14 (Miss. Ct. App. 2000).

Where the claimant injured his foot, which was considered a scheduled member under the statute, his loss of wage earning capacity was irrelevant; therefore, it was immaterial whether he attempted to or failed to find employment after reaching maximum medical improvement. Cook v. President Casino, 740 So. 2d 963, 1999 Miss. App. LEXIS 325 (Miss. Ct. App. 1999).

A claimant seeking compensation for an occupational disability to a scheduled member which exceeds the assigned partial functional impairment and yet falls short of 100% must establish under subsection (c) that the partial impairment has adversely impacted his or her wage earning capacity to an extent greater than the medical percentage of impairment. Alumax Extrusions Inc. v. Wright, 737 So. 2d 416, 1998 Miss. App. LEXIS 1114 (Miss. Ct. App. 1998).

Where a worker's occupational disability from loss of use of a scheduled member exceeds functional or medical impairment, the law measures the worker's compensation by the former. Walker Mfg. Co. v. Cantrell, 577 So. 2d 1243, 1991 Miss. LEXIS 190 (Miss. 1991).

Even though a worker suffered injury only to the second and third fingers of his left hand, the Compensation Commission's finding that the disability rating under § 71-3-17 was to the entire hand as opposed to a percentage of disability to the fingers only was not in error under the particular facts of the particular claim. Flake v. Randle Reed Trucking Co., 458 So. 2d 223, 1984 Miss. LEXIS 1954 (Miss. 1984).

Where the great weight of evidence indicated that a worker had sustained an injury to his shoulder with functional loss affecting only the right arm, compensation was properly limited to the schedule which includes the right arm; such an injury would not be related to the body as a whole. Richey v. Tupelo, 361 So. 2d 995, 1978 Miss. LEXIS 2393 (Miss. 1978).

A workman while using a machete who suffered severe cuts to three fingers of his right hand and an aggravation of a pre-existing gastrointestinal trouble was entitled to permanent partial disability and the medical expenses occasioned as the result of the cuts and the treatment of his gastrointestinal troubles. Weyerhaeuser Co. v. Ratliff, 197 So. 2d 231, 1967 Miss. LEXIS 1516 (Miss. 1967).

Where a claimant suffered a permanent partial disability of the right arm as a consequence of falling from a ladder and striking a concrete driveway with his shoulder, and there was no medical finding of fracture or tear and that portion of his disability attributable to the injury consisted only of a mild or subacute tenosymovitis, his injury was correctly related to his loss of use of the arm, a scheduled member rather than to a general physical disability. Walters Bros. Builders v. Loomis, 187 So. 2d 586, 1966 Miss. LEXIS 1353 (Miss. 1966).

An employee who, as a consequence of an injury, underwent an operation in which both the medial and the lateral ligaments of his right knee were removed, which resulted in some atrophy of the leg due largely to wastage of the quadricepts muscle, had not, on the basis of uncontradicted medical evidence, suffered a total loss of use of his right leg. Harris & Johnson Constr. Co. v. Ward, 187 So. 2d 26, 1966 Miss. LEXIS 1338 (Miss. 1966).

Severance of the tendons of two fingers, resulting in only a 50% loss of use of such fingers, does not entitle one to have disability proportioned to the whole hand. Luker v. Greenville Sheet Metal Works, 240 Miss. 378, 127 So. 2d 863, 1961 Miss. LEXIS 473 (Miss. 1961).

Compensation may not be awarded for disfigurement resulting from the loss of an eye, in addition to compensation for such loss. Williams v. Roy Motor Co., 237 Miss. 750, 115 So. 2d 924, 1959 Miss. LEXIS 528 (Miss. 1959).

Although the pupil of one of the claimant's eyes, which was injured in an industrial accident, was almost twice as large as the other eye, the refusal of the commission to make an award for disfigurement did not constitute an abuse of its discretion, where it appeared that the claimant, as long as he continued to work for the employer, received the same wage as he had received before the injury. White v. R. C. Owen Co., 232 Miss. 268, 98 So. 2d 650, 1957 Miss. LEXIS 468 (Miss. 1957).

Claimant could not recover compensation for permanent partial disability under subsection (c) of this section [Code 1942, § 6998-09] as a result of an injury whereby he lost a testicle where there was no disabling pain. Jones v. Mason & Dulion Co., 229 Miss. 638, 91 So. 2d 715, 1957 Miss. LEXIS 307 (Miss. 1957).

Where workmen's compensation commission made an award based on evidence that the employee had sustained a total permanent loss of use of his arm, the commission did not award compensation for permanent total disability but only for permanent loss of use of the arm. Modern Laundry, Inc. v. Williams, 224 Miss. 174, 79 So. 2d 829, 1955 Miss. LEXIS 473 (Miss. 1955).

In a workmen's compensation proceeding the estimates of two doctors as to the extent of the claimant's loss of use of the left arm were mere estimates of medical disability, and it was for the commission to decide whether the claimant's loss of use of the arm was a total loss of use or partial loss of use for wage-earning purposes. Modern Laundry, Inc. v. Williams, 224 Miss. 174, 79 So. 2d 829, 1955 Miss. LEXIS 473 (Miss. 1955).

Under the Workmen's Compensation Law which provides for compensation for loss of an eye, removal of a totally sightless eyeball was covered by the Law and the claimant was entitled to compensation. McKenzie v. Gulf Hills Hotel, Inc., 221 Miss. 723, 74 So. 2d 830, 1954 Miss. LEXIS 585 (Miss. 1954).

An employee who lost the partial use of his right leg as the result of injuries sustained in the course of employment as a pipe fitter was not entitled to an award for 450 weeks but was entitled to compensation only for proportionate part of maximum period of 175 weeks. Nowlin v. Mississippi Chemical Co., 219 Miss. 873, 70 So. 2d 48, 70 So. 2d 49, 1954 Miss. LEXIS 396 (Miss. 1954).

13. Loss of or injury to non-scheduled members.

A claimant whose vocal cords were severed as the consequence of an accident, with the result that he could not thereafter speak above a whisper, was totally and permanently disabled where the use of his voice was essential to his employment. Aetna Finance Co. v. Bourgoin, 252 Miss. 852, 174 So. 2d 495, 1965 Miss. LEXIS 1154 (Miss. 1965).

Evidence held to warrant finding of total and permanent disability resulting from twisting of knee in turning to pick up bundle. I. Taitel & Son v. Twiner, 247 Miss. 785, 157 So. 2d 44, 1963 Miss. LEXIS 356 (Miss. 1963).

Since the claimant, who sustained, in addition to extensive damage to his arms, permanent damage to the muscles in his chest, left shoulder and back, and suffered 20 percent disability to his body as a whole, did not suffer scheduled injuries, his disability must be determined under subsection (c)(21) [now (25)] of this section [Code 1942, § 6998-09]. Russell v. Southeastern Utilities Service Co., 230 Miss. 272, 92 So. 2d 544, 1957 Miss. LEXIS 368 (Miss. 1957).

14. Calculation of disability period limitation.

Employee was entitled to temporary disability benefits under Miss. Code Ann. § 71-3-21 for a certain period of time, and only for those periods within that time when the employee was, because of the injury, unable to work and earn full pay, and the case was remanded to reflect this fact; it was error to have awarded the employee a total amount of temporary benefits under Miss. Code Ann. § 71-3-17(b), with a credit to the employer for any compensation earned by the employee during that time, because this was not a total disability, and this calculation did not lead to the proper credit. Howard Indus. v. Robinson, 846 So. 2d 245, 2002 Miss. App. LEXIS 574 (Miss. Ct. App. 2002).

Where the loss of a scheduled member is less than total, claimant is entitled to compensation at a rate of 662/3% of his average weekly wage, subject to the maximum limitations for weekly benefits contained in the Workmen's Compensation Act, for a period of time determined by multiplying the number of weeks compensation for such member by the percentage loss of that member. Stuart Mfg. Co. v. Walker, 313 So. 2d 574, 1975 Miss. LEXIS 1676 (Miss. 1975).

The number of weeks during which temporary total benefits have been paid are not to be deducted from the maximum period for permanent partial disability benefits. Midland Shirt Co. v. Ray, 249 Miss. 486, 163 So. 2d 251, 1964 Miss. LEXIS 410 (Miss. 1964).

Where the claimant's disability had been total from the date of the injury, the period of 450 weeks, prescribed as the limitation, should be calculated from the date of the injury. Prince v. Nicholson, 229 Miss. 718, 91 So. 2d 734, 1957 Miss. LEXIS 318 (Miss. 1957).

Where claimant's heart attack, suffered on August 14, 1952, was first found to have brought about temporary total disability, but on May 17, 1954, it was determined that claimant's disability was permanent total and had been since the date of his heart attack, claimant, who had in the meanwhile received compensation payments for temporary total disability, was not entitled then to start over again and recover for permanent total disability, was not entitled then to start over again and recover for permanent total disability for the maximum period, but could recover only the maximum compensation for permanent total disability, less the amount already paid to him. Morgan v. J. H. Campbell Constr. Co., 229 Miss. 289, 90 So. 2d 663, 1956 Miss. LEXIS 608 (Miss. 1956).

The formula of compensation for permanent partial disability, resulting from fractures in transverse processes of the lumbar vertebrae, which medical testimony indicated to be from 10 percent to 50 percent, is 662/3% of the difference between the claimant's average weekly wages and his wage earning capacity thereafter, and not an apportionment of the percentage of permanent partial disability to the number of weeks allowed for total disability and payment of claimant's regular compensation rate for the number of weeks thus determined, since such an injury comes within the "other cases" classification of this section [Code 1942, § 6998-09] and compensation benefits are limited to the sum of $8,600. Ebasco Services, Inc. v. Harris, 227 Miss. 85, 85 So.

2d 784, 1956 Miss. LEXIS 657 (Miss. 1956).

15. Disability rating.

Court of Appeals erred in reversing a decision by the Workers' Compensation Commission that awarded the employee permanent-partial disability benefits because the case involved a permanent-partial disability to an employee's leg, the Commission's decision was consistent with the law governing benefits for a permanent-partial disability, and was supported by substantial evidence. Logan v. Klaussner Furniture Corp., 238 So. 3d 1134, 2018 Miss. LEXIS 126 (Miss. 2018).

Mississippi Workers' Compensation Commission properly determined that an employee was only entitled to a two-percent industrial loss of use because the employee failed to prove she suffered a disability that amounted to an industrial loss of use greater than the medical impairment percentage she was assigned by her doctor, nothing in the doctor's findings indicated that the employee's injury had produced any physical work restrictions sufficient to support a finding that she had an industrial loss of use in excess of her permanent impairment rating, the employee was actually making a higher salary now than she was pre-injury, and the employee had not received any subsequent medical treatment or any prescription medicine related to her injury. Sampson v. MTD Prods., 225 So. 3d 541, 2017 Miss. App. LEXIS 186 (Miss. Ct. App. 2017).

The medical and vocational proof rebutted any presumption as to a claimant's alleged total industrial loss of use to the right upper extremity because the claimant's post-injury employment with the employer demonstrated that the claimant could perform some of the substantial acts of the claimant's usual employment, a vocational expert testified about the job opportunities that were available to the claimant, and the claimant did not demonstrate an incapacity post-injury to earn the same wages as the claimant was earning pre-injury. Hathorn v. ESCO Corp., 224 So. 3d 543, 2016 Miss. App. LEXIS 739 (Miss. Ct. App. 2016), cert. denied, 223 So. 3d 785, 2017 Miss. LEXIS 307 (Miss. 2017).

Workers' Compensation Commission erred in finding, on remand, that an injured worker incurred a permanent-partial disability with a 60-percent industrial loss of use of her left lower extremity stemming from an admittedly work-related injury because the Commission's decision did not comport with the appellate court's findings that the injury was permanent and resulted in a loss of wage-earning capacity. Logan v. Klaussner Furniture Corp., 2016 Miss. App. LEXIS 742 (Miss. Ct. App. Nov. 15, 2016).

Workers' Compensation Commission's downward adjustment of a claimant's occupational disability, pursuant to Miss. Code Ann. § 71-3-17(c), was supported by substantial evidence because even though the claimant did suffer some occupational loss, the claimant had returned to work on a full-time basis performing work for which he was qualified and which required the use of the claimant's arms to some degree; the claimant sustained a compensable injury as a result of an indirect lightning strike while working on a land-based oil rig. Mixon v. Greywolf Drilling Co., LP, 62 So. 3d 414, 2010 Miss. App. LEXIS 671 (Miss. Ct. App. 2010).

Employee was properly awarded permanent partial disability benefits for carpal tunnel syndrome because the employee's ability to earn post-injury wages, although at a diminished capacity, precluded an award of permanent total disability benefits; the employee did not sufficiently pursue any of the available jobs provided by a vocational expert. Price v. Omnova Solutions, Inc., 17 So. 3d 104, 2009 Miss. App. LEXIS 86 (Miss. Ct. App.), cert. denied, 17 So. 3d 99, 2009 Miss. LEXIS 425 (Miss. 2009).

Ability to earn post-injury wages, even significantly diminished post-injury wages, defeats a claim of permanent total disability. Hill v. Mel, Inc., 989 So. 2d 969, 2008 Miss. App. LEXIS 224 (Miss. Ct. App. 2008).

Where an employee was injured while working, was terminated, and sought workers' compensation benefits, it was not error to find that the employee was 20% permanently partially disabled, because, inter alia, (1) the ability to earn post-injury wages, even significantly diminished post-injury wages, defeated a claim of permanent total disability, and (2) the employee found employment meeting the "usual employment" standard based on a bus driver job. Hill v. Mel, Inc., 989 So. 2d 969, 2008 Miss. App. LEXIS 224 (Miss. Ct. App. 2008).

Permanent partial disability benefits were properly awarded to an employee where a preponderance of the evidence reflected that the employee suffered an industrial impairment beyond either set of medical impairment ratings assigned; the employee suffered a 60 percent loss of industrial use of the right upper extremity and a 60 percent loss of industrial use of the left upper extremity. Neill v. Waterway, Inc./Team America, 994 So. 2d 196, 2008 Miss. App. LEXIS 179 (Miss. Ct. App.), cert. denied, 998 So. 2d 1010, 2008 Miss. LEXIS 684 (Miss. 2008).

Mississippi workers' compensation commission acted properly in determining that the employee's treating physician's opinions were not as credible as those of the other physicians; the employee's injury was subject to disability benefits set forth in Miss. Code Ann. § 71-3-17(c)(1), and not the general total body impairment scheme under Miss. Code Ann. § 71-3-17(c)(25). Martinez v. Swift Transp., 962 So. 2d 746, 2007 Miss. App. LEXIS 523 (Miss. Ct. App. 2007).

Where the employee injured her right elbow while working on the assembly line, one doctor gave his opinion in favor of total disability; two other doctors opined against total disability. The Mississippi Workers' Compensation Commission did not err by denying her permanent disability benefits; the Commission found that she suffered only a fifteen percent (15%) disability as to her right upper extremity. Smith v. Durant Elec. Corp., 918 So. 2d 860, 2005 Miss. App. LEXIS 780 (Miss. Ct. App. 2005).

In a workers' compensation case where the administrative judge awarded the claimant permanent total disability benefits under Miss. Code Ann. § 71-3-17, but the Mississippi Workers' Compensation Commission found in favor of the employer and denied those benefits, the appellate court exceeded its limited scope of review, Miss. Code Ann. § 71-3-51, in upholding the circuit court's ruling which overturned the decision of the Commission that the claimant had not sustained a second work-related injury because the Commission's ruling that the claimant had not sustained such an injury was clearly supported by substantial evidence including: (1) the testimony of the claimant's co-workers that the claimant did not report a second injury; (2) the fact that, aside from the claimant's own treating physician, there was no medical evidence supporting her claim of a second injury; and (3) the fact that the only persons testifying as to the claimant's alleged second injury were the claimant, her family, and her treating physician. Raytheon Aero. Support Servs. v. Miller, 861 So. 2d 330, 2003 Miss. LEXIS 581 (Miss. 2003).

The claimant should have been assigned a permanent total disability rating and received 450 weeks of benefits where (1) although his second and third fingers were not seriously injured, his little finger was half amputated, his ring finger was shortened at the first joint, and even after several surgeries, he had no feeling or motion in his thumb and could not grip with it, (2) the claimant had constant pain in his left hand, attributable in large part to neuromas in his palm, ring finger, and thumb which caused him pain when he touched anything, and (3) the claimant was rendered permanently incapable of performing the only job he had ever been trained to do, i.e., trim carpenter. Good Earth Dev., Inc. v. Rogers, 800 So. 2d 1164, 2001 Miss. App. LEXIS 169 (Miss. Ct. App. 2001).

A road construction worker was properly determined to suffer from three permanent partial disabilities, rather than permanent total disability, notwithstanding his inability to return to his pre-injury job, where (1) the employer offered to rehire the worker as a flagman, (2) the worker was furnished with a vocational rehabilitation counselor who attempted to work with him to identify and pursue other employment opportunities, but he was uncooperative, missed two scheduled appointments with the counselor, and apparently never pursued any of the job positions identified by the counselor, and (3) there was no evidence that the worker independently pursued any other gainful employment for which he might have been suited, taking into account his diminished physical abilities. McCray v. Key Constructors, Inc., 803 So. 2d 1199, 2000 Miss. App. LEXIS 474 (Miss. Ct. App. 2000).

The decision of the Commission awarding permanent partial disability was upheld where there was substantial evidence in the record to support a determination that claimant failed to demonstrate that her industrial disabilities, as measured by her ability to perform her usual pre-injury employment, exceeded the functional impairment indicated by the expert medical evidence. Robinette v. Henry I. Siegal Co., 801 So. 2d 739, 2000 Miss. App. LEXIS 14 (Miss. Ct. App. 2000).

The claimant was properly found to be permanently and totally disabled, rather than permanently and partially disabled, where (1) although she returned to work after she injured her wrist, she worked in constant pain, and (2) all attempts to find work or prospects of employment for the claimant were unsuccessful. Sunbeam/Oster Co. v. Bolden, 722 So. 2d 713, 1998 Miss. App. LEXIS 811 (Miss. Ct. App. 1998).

When a claimant, having reached maximum medical recovery, reports back to his or her employer for work, and the employer refuses to reinstate or rehire the claimant, then it is prima facie that the claimant has met his or her burden of showing total disability; the burden then shifts to the employer to prove a partial disability or that the claimant has suffered no loss of wage earning capacity. Jordan v. Hercules, Inc., 600 So. 2d 179, 1992 Miss. LEXIS 224 (Miss. 1992), but see Dulaney v. National Pizza Co., 733 So. 2d 301, 1998 Miss. App. LEXIS 990 (Miss. Ct. App. 1998).

The evidence supported a finding that an employee suffered a 100 percent industrial loss of use of his left leg, rather than only a 40 percent loss, even though the employee's treating physician testified that the employee had a 40 percent permanent partial impairment of his left leg, where the physician also testified that the employee would be limited in activities such as standing for long periods, climbing ladders and stairs, and carrying heavy loads but that he could work in sedentary types of positions where he could sit to do the work, the employee was a 43-year-old man who dropped out of school during the 10th grade, from that time until the time of his injury he worked in construction, did carpentry work, and delivered furniture, at the time of the injury he was employed at a furniture company where he did not perform any one particular job but was moved around from job to job as needed, some of the jobs that he performed at the company included working in the sanding department, cutting out chest-of-drawer tops, and working in the mill, the employee testified that after his injury he could not do carpentry work and could not do any jobs which required him to stand but he could sand edges and use a table saw, and he testified that he continued to have problems with his leg every day, including swelling and pain. McGowan v. Orleans Furniture, Inc., 586 So. 2d 163, 1991 Miss. LEXIS 596 (Miss. 1991).

A claimant may continue to be temporarily disabled, even though he or she has received maximum recovery from conservative care, if his or her condition can be improved by surgery. McGowan v. Orleans Furniture, Inc., 586 So. 2d 163, 1991 Miss. LEXIS 596 (Miss. 1991).

The evidence was sufficient to support a finding that a claimant suffered only a 5 percent permanent partial occupational disability by reason of a work-connected injury to his left hand, where the claimant failed to offer evidence that he had unsuccessfully attempted to perform his usual duties, and he failed to offer evidence that he was refused employment based upon the disability to his hand in that he made no search for work outside his prior employment, stating that his car had been repossessed and he was without transportation. Walker Mfg. Co. v. Cantrell, 577 So. 2d 1243, 1991 Miss. LEXIS 190 (Miss. 1991).

An employee's job-related contact dermatitis caused by exposure to sulfur dioxide constituted a permanent loss of wage earning capacity, such that the employee was entitled to permanent partial disability benefits, where the employee's sensitivity was permanent in nature so that he could not be exposed to sulfur dioxide in the future, and he made reasonable though unsuccessful efforts to find other comparably gainful employment. Piper Industries, Inc. v. Herod, 560 So. 2d 732, 1990 Miss. LEXIS 196 (Miss. 1990).

An employee was entitled to an award of total temporary disability payments for essential tremors even though the condition was a permanent partial disability from its onset since, until the tremors were controllable or predictable, the condition was totally disabling. Quitman Knitting Mill v. Smith, 540 So. 2d 623, 1989 Miss. LEXIS 140 (Miss. 1989).

An employee who was injured when some crates fell from a truck, striking her on the legs and back and knocking her unconscious, sustained an accident back injury which totally disabled her when she attempted to work at the advice of the company doctor for more than a year after the accident, and she was entitled to temporary total disability benefits and to a further determination as to the permanence of her injury, a finding that she had sustained no permanent injury being premature and unsupported by substantial evidence. Jordan v. Arkansas Valley Industries, Inc., 241 So. 2d 143, 1970 Miss. LEXIS 1321 (Miss. 1970).

The burden of proof is upon the claimant to establish the degree of his disability, and the degree of disability, whether permanent or temporary, involves (1) actual physical injury and (2) loss of wage earning capacity. American Potash & Chemical Corp. v. Rea, 228 So. 2d 867, 1969 Miss. LEXIS 1405 (Miss. 1969).

A claimant whose employment-induced contact dermatitis prevented him from following in the future his occupation as a cement finisher was entitled only to an award of temporary total disability where, under the provisions of Code 1942, § 6998-02(9) [now subsection (i) of Code 1972, § 71-3-3], he must, after his disability subsides, seek employment in another or different trade to earn his wages, and there was no evidence that he had done so. B.J. Collins v. Miss. Employment Sec. Comm., 190 So. 2d 894, 1966 Miss. LEXIS 1419 (Miss. 1966).

Where claimant's entire disability relates back to the beginning of his rating of temporary total disability, and it becomes permanent at a later time, claimant is not entitled to recover both for temporary total disability up to the date on which it was discovered to be permanent and also to recover for permanent total disability after the discovery of such total disability, and he is limited to recovering only the maximum allowable for permanent total disability beginning with the date of the injury. Dillingham Mfg. Co. v. Upton, 252 Miss. 281, 172 So. 2d 766, 1965 Miss. LEXIS 1100 (Miss. 1965), overruled, Cockrell Banana Co. v. Harris, 212 So. 2d 581, 1968 Miss. LEXIS 1290 (Miss. 1968), but see Cockrell Banana Co. v. Harris, 212 So. 2d 581, 1968 Miss. LEXIS 1290 (Miss. 1968).

Construction employee held entitled to more than 50% disability, and to compensation for total loss of the use of a leg where, though a fracture healed, he was unable to do former heavy work. Tyler v. Oden Constr. Co., 241 Miss. 270, 130 So. 2d 552, 1961 Miss. LEXIS 342 (Miss. 1961).

Where award has been made for temporary total disability and disability proves to be permanent, the award may be amended to award compensation for total permanent disability in an amount from which compensation paid is to be deducted. Mullins & Parker v. Rucker, 237 Miss. 330, 115 So. 2d 535, 1959 Miss. LEXIS 474 (Miss. 1959).

An award to a person contracting disabling dermatitis from handling creosote-coated pipe should be for temporary total disability benefits during its continuance. Komp Equipment Co. v. Clinton, 236 Miss. 560, 112 So. 2d 541, 1959 Miss. LEXIS 351 (Miss. 1959).

Adjudicated permanent disability is presumed to continue until the commission, upon appropriate hearings, determines otherwise. Jackson Ready-Mix Concrete v. Young, 236 Miss. 550, 111 So. 2d 255, 1959 Miss. LEXIS 349 (Miss. 1959).

Temporary disability is not conclusively presumed to continue until the appellate court's affirmance of an award therefor, so as to require payments of compensation for the period of pendency of the appeal. Jackson Ready-Mix Concrete v. Young, 236 Miss. 550, 111 So. 2d 255, 1959 Miss. LEXIS 349 (Miss. 1959).

An award of 60% loss of use of a left hand by one who lost nearly all of his first, second and third fingers, held supported by substantial evidence. Pearl River Hampers, Inc. v. Castilow, 234 Miss. 768, 108 So. 2d 200, 1959 Miss. LEXIS 553 (Miss. 1959).

Where the finding of the attorney-referee and the commission that claimant was partially and permanently disabled to the extent of 15 percent to the body as a whole, and that such disability resulted in a loss of 17 percent wage-earning capacity, was supported by substantial evidence, circuit court's judgment of reversal was reversed by the supreme court, and the case remanded to the commission. Grubbs v. Revell Furniture Co., 234 Miss. 319, 106 So. 2d 390, 1958 Miss. LEXIS 494 (Miss. 1958).

Under a medical showing that the claimant was suffering from an injury to his spine and was unable to perform his work and would remain in that condition until he underwent surgery, the claimant was totally disabled within the meaning of subsection (b) of this section [Code 1942, § 6998-09] and was entitled to temporary total disability benefits until he recovered from the operation and obtained maximum recovery, at which time his benefit for permanent partial disability under subsection (c) could be evaluated. Houston Contracting Co. v. Reed, 231 Miss. 213, 95 So. 2d 231, 1957 Miss. LEXIS 507 (Miss. 1957).

Where both the claimant and a doctor, who had last examined him on October 6, 1955, testified at a hearing beginning on September, 1955 and concluding in November, 1955, that the claimant was suffering from a temporary total disability resulting from injury received in his employment, the circuit court properly reversed the workmen's compensation board's order denying claimant compensation benefits after June 5, 1955, which was based upon the opinion of a doctor who had last examined claimant on May 5, 1955, that claimant would be able to return to work within another month. Masonite Corp. v. Fields, 229 Miss. 524, 91 So. 2d 282, 1956 Miss. LEXIS 635 (Miss. 1956).

In a workmen's compensation case where a roustabout sustained several skull fractures when a piece of iron pipe fell out of a set of poles and struck him on the head, his temporary total disability did not terminate when he returned to work under the advice of a doctor who was obviously seeking to ascertain to what extent the patient was responding to treatment. J. F. Crowe Well Servicing Contractor v. Fielder, 224 Miss. 353, 80 So. 2d 29, 1955 Miss. LEXIS 499 (Miss. 1955).

16. Pre-existing disease or infirmity.

Administrative judge's finding that the claimant's 2007 foot injury was work-related was supported by substantial evidence showing that the prolonged standing required by the claimant's job aggravated the claimant's foot condition. Flowers v. Crown Cork & Seal United States, 168 So. 3d 1009, 2013 Miss. App. LEXIS 388 (Miss. Ct. App. 2013).

While employee had a pre-existing back injury, no doctor ever excluded the work-related fall as a causal factor to the employee's disability, no one disputed that he was totally and permanently disabled, and one doctor testified that the employee's condition was consistent with an individual who had recently suffered a fall; thus, award of workers' compensation benefits was supported by substantial evidence. Frito-Lay, Inc. v. Leatherwood, 908 So. 2d 175, 2005 Miss. App. LEXIS 481 (Miss. Ct. App. 2005).

Trial court erred in reversing Workers' Compensation Commission's award of permanent total disability; there was substantial evidence to support the Commission's finding that the claimant's employment was a substantial contributing cause of her disability; and, the trial court erred when it reweighed the evidence rather than looking to see if there was substantial evidence to support the Commission's decision. Spencer v. Tyson Foods, Inc., 869 So. 2d 1069, 2004 Miss. App. LEXIS 287 (Miss. Ct. App. 2004).

Last injurious exposure rule was applicable where substantial evidence showed claimant's injury resulted from 31 spent years working for the former employer, and any aggravation suffered with the subsequent employer, did not independently contribute to claimant's final disability, as the undisputed facts showed claimant's foot bothered claimant so severely while employed with the former employer, that claimant underwent two surgeries, and had incurred several periods of disability while with the former employer. Craft v. Millcreek Rehab. Ctr., 854 So. 2d 508, 2003 Miss. App. LEXIS 842 (Miss. Ct. App. 2003).

Where one enjoys the functional ability to perform his work in spite of an existing congenital defect and suffers an injury which aggravates the said defect, thereafter causing a loss of his functional ability, then as long as the functional loss continues the injured party is eligible for compensation; when an injury causes loss of functional ability, it is compensable, even though such loss was due to aggravation of a preexisting congenital defect. Bolton v. Catalytic Constr. Co., 309 So. 2d 167, 1975 Miss. LEXIS 1867 (Miss. 1975).

A claimant who has once been adjudged totally and permanently disabled and who has received benefits therefor, but who thereafter resumes gainful employment and becomes injured while so engaged, is not precluded from receiving benefits for loss of wage earning capacity arising out of the later injury; however, a claimant may not pyramid benefits and receive in excess of the maximum weekly benefit provided by statute during any one period. Observa--Dome Laboratories, Inc. v. Ivy, 302 So. 2d 862, 1974 Miss. LEXIS 1433 (Miss. 1974).

A workman while using a machete who suffered severe cuts to three fingers of his right hand and an aggravation of a preexisting gastrointestinal trouble was entitled to permanent partial disability and the medical expenses occasioned as the result of the cuts and the treatment of his gastrointestinal troubles. Weyerhaeuser Co. v. Ratliff, 197 So. 2d 231, 1967 Miss. LEXIS 1516 (Miss. 1967).

A claimant suffering from cystic emphysema who, as a consequence of inhaling plastic dust and chemical fumes in the course of his employment, suffered a spontaneous pneumothorax was entitled to receive temporary total disability payments for the period that his lung remained collapsed, for his condition had been aggravated by his employment. Presto Mfg. Co. v. Chandler, 252 Miss. 36, 172 So. 2d 431, 1965 Miss. LEXIS 1072 (Miss. 1965).

Where the employee suffered from a pre-existing heart disease for which he was receiving veteran's compensation, and his disability arose from an attack of acute coronary insufficiency, or angina pectoris, it was a temporary condition caused by the pre-existing disease, any subsequent disability was the consequence of that disease, and the disability resulting from the attack was not a permanent one compensable under this section [Code 1942, § 6998-09]. Todd v. Potts Gin Co., 251 Miss. 340, 169 So. 2d 442, 1964 Miss. LEXIS 355 (Miss. 1964).

Compensation for an injury which aggravates a pre-existing condition ceases where the effects of the injury have subsided, though the pre-existing condition continues. Lloyd Ford Co. v. Price, 240 Miss. 250, 126 So. 2d 529, 1961 Miss. LEXIS 456 (Miss. 1961); Malone v. Ingalls Shipbuilding Corp., 240 Miss. 319, 127 So. 2d 403, 1961 Miss. LEXIS 464 (Miss. 1961).

Recurrences of dermatitis attributable to and connected with the original occurrence are compensable by the employer for whom claimant was working when the infection first begun. Komp Equipment Co. v. Clinton, 236 Miss. 560, 112 So. 2d 541, 1959 Miss. LEXIS 351 (Miss. 1959).

Where an employee's injury aggravated a pre-existing disease or infirmity, such injury is compensable, and the amount of the award is not scaled down because the disability resulting from the injury complained of might be due in part to the pre-existing disease or infirmity. Kahne v. Robinson, 232 Miss. 670, 100 So. 2d 132, 100 So. 2d 585, 1958 Miss. LEXIS 315, 1958 Miss. LEXIS 316 (Miss. 1958).

Since the questions of whether the worker's leg injury, sustained in the course of his employment, aggravated his pre-existing varicose vein condition, or whether the worker's pre-existing condition aggravated the leg injury, were for the commission, an award to the worker for temporary total disability would be affirmed where the court was unable to say that the commission's decision was not supported by the evidence. Jackson Ready-Mix Concrete v. Young, 230 Miss. 644, 93 So. 2d 645, 1957 Miss. LEXIS 405 (Miss. 1957).

Where it was shown that claimant's condition, following an operation for a pre-existing disease, was aggravated by the strain caused by her industrial employment and that, as a result, she was unable to do the work which she formerly did, claimant was entitled to recover for permanent partial disability. King v. Westinghouse Electric Corp., 229 Miss. 830, 92 So. 2d 209, 1957 Miss. LEXIS 584 (Miss. 1957).

17. —Apportionment.

The Workers' Compensation Commission properly apportioned an employee's disabilities between 2 injuries where there was no evidence of a causal connection between the 2 injuries. Cawthon v. Alcan Aluminum Corp., 599 So. 2d 925, 1991 Miss. LEXIS 713 (Miss. 1991).

Apportionment of an award of compensation based on the claimant's pre-existing heart condition was proper, even though his pre-existing heart condition caused no pre-injury occupational disability, since the heart attack which left the plaintiff permanently and totally disabled was materially contributed to by his pre-existing obstructive pulmonary disease and his hypertension. Mitchell Buick, Pontiac & Equipment Co. v. Cash, 592 So. 2d 978, 1991 Miss. LEXIS 980 (Miss. 1991).

Commission finding of fact on apportionment of disability between injury on job and pre-existing condition will be reversed on appeal where finding has been made in broad conclusory language for which reviewing court finds no substantial evidence in record. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584, 1985 Miss. LEXIS 2197 (Miss. 1985).

The trial court was in error in awarding a nurse's aid total and permanent disability on the ground that she was disabled from doing the work of a nurse's aid and from doing work of a like character as a result of compensable injury to her lower back, without apportionment on account of a pre-existing condition or injury to her lower back. Compere's Nursing Home v. Biddy, 243 So. 2d 412, 1971 Miss. LEXIS 1511 (Miss. 1971).

Where there is a previous injury or disability, permanent partial disability benefits must be apportioned from the date of the claimant's maximum medical recovery. Central Electric & Machinery Co. v. Shelton, 220 So. 2d 320, 1969 Miss. LEXIS 1454 (Miss. 1969).

Where the commission found that the reactivation of claimant's pre-existing tuberculosis, culminating in hemorrhaging, was an incident growing out of and in the course of his employment, that the pre-existing condition and claimant's work activities combined to cause claimant to become permanently and totally disabled and to prevent him from returning to the same or similar employment, he was entitled to a 50 percent apportionment of benefits. Jackson Ready-Mix Concrete v. Meadows, 198 So. 2d 576, 1967 Miss. LEXIS 1266 (Miss. 1967).

Where the amputation of claimant's leg was necessitated in part by his pre-existing osteomyelitis, he was not entitled to receive the stated compensation provided by this section [Code 1942, § 6998-09], but his award was required to be apportioned as provided in Code 1942, § Communications Equipment Co. v. Burke, 186 So. 2d 765, 1966 Miss. LEXIS 1330 (Miss. 1966).

18. Multiple injuries.

Where multiple injuries are sustained by the employee in a single accident, affecting directly two members of the same extremity, if the injuries result in some disability to the greater member other than that occasioned by disability to the lesser member, the disability rating should be for loss of use of the greater member. Armstrong Cork Co. v. Sheppard, 222 Miss. 359, 76 So. 2d 225, 1954 Miss. LEXIS 652 (Miss. 1954).

Where there were multiple injuries to the employee's foot and lower part of the leg above the ankle, attorney-referee and commission were amply justified in holding that the basis of the award of compensation to the claimant should be proportionate to the loss of use of the leg as a whole, and in refusing to attempt to separate the injury to the leg above the ankle from the injuries to the foot for the purpose of evaluating the appellee's claim for compensation. Armstrong Cork Co. v. Sheppard, 222 Miss. 359, 76 So. 2d 225, 1954 Miss. LEXIS 652 (Miss. 1954).

19. Maximum medical improvement.

Mississippi Workers' Compensation Commission erred in terminating the award of temporary total disability benefits for the claimant's foot condition as there was no finding by either podiatrist or the Commission that the claimant had reached maximum medical improvement for his injury. Flowers v. Crown Cork & Seal United States, 168 So. 3d 1009, 2013 Miss. App. LEXIS 388 (Miss. Ct. App. 2013).

Mississippi Workers' Compensation Commission erroneously denied permanent disability benefits for the claimant's 2007 foot injury as consideration of such benefits was premature given that the record showed that the claimant had not reached maximum medical improvement when he attempted to return to work. Flowers v. Crown Cork & Seal United States, 168 So. 3d 1009, 2013 Miss. App. LEXIS 388 (Miss. Ct. App. 2013).

Modification of the disability award in a workers' compensation action down to a 30 percent permanent partial disability award was appropriate under Miss. Code Ann. §§ 71-3-3(i) and 71-3-17(a) because the employee failed to prove that he suffered permanent total disability. The employee was released by two doctors without work restrictions and he failed to reapply or make an otherwise diligent effort to return to work with the employer after reaching maximum medical improvement; further, one doctor was unable to explain the employee's subjective complaints about pain in his leg and another doctor was likewise also unable to explain the employee's complaints of decreased sensation in the leg. Smith v. Johnston Tombigbee Furniture Mfg. Co., 43 So. 3d 1159, 2010 Miss. App. LEXIS 144 (Miss. Ct. App.), cert. denied, 49 So. 3d 106, 2010 Miss. LEXIS 470 (Miss. 2010).

Modification of the disability award in a workers' compensation action down to a 30 percent permanent partial disability award was appropriate under Miss. Code Ann. §§ 71-3-3(i) and 71-3-17(a) because the employee failed to prove that he suffered permanent total disability. The employee was released by two doctors without work restrictions and he failed to reapply or make an otherwise diligent effort to return to work with the employer after reaching maximum medical improvement; further, one doctor was unable to explain the employee's subjective complaints about pain in his leg and another doctor was likewise also unable to explain the employee's complaints of decreased sensation in the leg. Smith v. Johnston Tombigbee Furniture Mfg. Co., 43 So. 3d 1159, 2010 Miss. App. LEXIS 144 (Miss. Ct. App.), cert. denied, 49 So. 3d 106, 2010 Miss. LEXIS 470 (Miss. 2010).

Workers' compensation benefits for a permanent disability were denied because a claimant did not show that he suffered any disability or loss of wage-earning capacity due to a lower back injury where he had reached maximum medical improvement; all of the physicians cleared the claimant for work, none of them found physical problems, the claimant subsequently worked other jobs with similar duties, there were no complaints about his work performance, and he stated that his back was not a problem. Leslie v. SAIA Motor Freight, 970 So. 2d 218, 2007 Miss. App. LEXIS 812 (Miss. Ct. App. 2007).

Mississippi Workers' Compensation Commission did not abuse its discretion in finding that surgery for a claimant's L5-S1 condition was not medically reasonable or necessary, and that she had reached maximum medical improvement, as doctors testified that the need for surgery depended on her subjective experience of, and tolerance for, pain, and the credibility of her testimony in that regard was for the administrative law judge and Commission to determine. Barber Seafood, Inc. v. Smith, 911 So. 2d 454, 2005 Miss. LEXIS 470 (Miss. 2005).

20. Effect of receipt of disability benefits.

Although a claimant received short-term disability benefits, he was not equitably estopped from receiving workers' compensation benefits for his 2007 foot injury as the employer had not provided the court with any authority that the payment of short-term disability benefits required the denial of workers' compensation benefits. Flowers v. Crown Cork & Seal United States, 168 So. 3d 1009, 2013 Miss. App. LEXIS 388 (Miss. Ct. App. 2013).

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Excessiveness or adequacy of damages awarded for injuries to head or brain, or for mental or nervous disorders. 14 A.L.R.4th 328.

Excessiveness of adequacy of damages awarded for injuries to, or condition induced in, circulatory, digestive, and glandular systems. 14 A.L.R.4th 539.

Workers' compensation: bonus as factor in determining amount of compensation. 84 A.L.R.4th 1055.

What amounts to failure or refusal to submit to medical treatment sufficient to bar recovery of workers' compensation. 3 A.L.R.5th 907.

Excessiveness or adequacy of damages awarded for injuries to head or brain. 50 A.L.R.5th 1.

Excessiveness or adequacy of damages awarded for injuries to nerves or nervous system. 51 A.L.R.5th 467.

Excessiveness or adequacy of damages awarded for injuries causing mental or psychological damages. 52 A.L.R.5th 1.

Right to workers' compensation for physical injury or illness suffered by claimant as result of nonsudden mental stimuli-Right to compensation under particular statutory provisions. 122 A.L.R.5th 653.

Construction and Application of State Workers' Compensation Laws to Claim for Hearing Loss – Resulting from Single Traumatic Accident or Event. 90 A.L.R.6th 425.

Am. Jur.

26 Am. Jur. Trials 645, Workmen's Compensation–Employment Party Injury Litigation.

33 Am. Jur. Trials 467, Pathologist as Expert Witness: Malpractice Considerations.

36 Am. Jur. Trials 573, Worker?s Compensation: Compensability of Multiple Sclerosis.

37 Am. Jur. Trials 115, Contractor?s Liability for Mishandling Toxic Substance.

15 Am. Jur. Proof of Facts 2d 711, Physician's Failure to Obtain Informed Consent to Innovative Practice or Medical Research.

17 Am. Jur. Proof of Facts 2d 575, Physician's Use of Excessive Radiation.

19 Am. Jur. Proof of Facts 2d 485, Malpractice Liability in Genetic Counseling.

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26 Am. Jur. Proof of Facts 2d 421, "Total Disability" of Insured Attorney.

27 Am. Jur. Proof of Facts 2d 361, Anosmia.

30 Am. Jur. Proof of Facts 2d 95, Brain Injuries Due to Trauma.

30 Am. Jur. Proof of Facts 2d 341, Aphasia.

30 Am. Jur. Proof of Facts 2d 511, Traumatic Cause or Aggravation of Condition Affecting Mobility of Joints.

31 Am. Jur. Proof of Facts 2d 265, Rupture of Blood Vessel Due to Trauma.

31 Am. Jur. Proof of Facts 2d 611, Cardiovascular Shock.

32 Am. Jur. Proof of Facts 2d 217, Aplastic Anemia.

32 Am. Jur. Proof of Facts 2d 559, Peptic Ulcer.

36 Am. Jur. Proof of Facts 2d 335, Hip Injuries.

37 Am. Jur. Proof of Facts 2d 223, Neck Injuries.

38 Am. Jur. Proof of Facts 2d 285, Lumbar Spine Injuries.

40 Am. Jur. Proof of Facts 2d 263, Hearing Loss Due to Trauma.

42 Am. Jur. Proof of Facts 2d 481, Workers' Compensation: Injury Occurring During Social, Recreational, or Athletic Activity.

44 Am. Jur. Proof of Facts 2d 1, Burn Injuries.

45 Am. Jur. Proof of Facts 2d 1, Asbestosis.

45 Am. Jur. Proof of Facts 2d 137, Qualification of Chiropractor as Expert Witness.

45 Am. Jur. Proof of Facts 2d 249, Intentional Infliction of Emotional Stress by Employer.

46 Am. Jur. Proof of Facts 2d 145, Lead Poisoning.

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46 Am. Jur. Proof of Facts 2d 275, Foundation for Admission of Thermogram.

48 Am. Jur. Proof of Facts 2d 401, Beryllium Poisoning.

48 Am. Jur. Proof of Facts 2d 431, Arsenic Poisoning.

50 Am. Jur. Proof of Facts 2d 1, Providing Significant Disability from Mild Head Injuries.

1 Am. Jur. Proof of Facts 3d 123, Temporomandibular Joint Injuries.

1 Am. Jur. Proof of Facts 3d 197, Recovery for Severe Burn Injuries.

1 Am. Jur. Proof of Facts 3d 291, Toxic Liver Injury.

2 Am. Jur. Proof of Facts 3d 1, Facial Injuries.

2 Am. Jur. Proof of Facts 3d 657, Pelvic Injuries.

4 Am. Jur. Proof of Facts 3d 73, Admissibility and Reliability of Electrocardiogram.

7 Am. Jur. Proof of Facts 3d 143, Workers' Compensation for Attendant Care Services by Family Members.

8 Am. Jur. Proof of Facts 3d 1, Carpal Tunnel Syndrome.

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99 C.J.S., Workers' Compensation §§ 516 et seq.

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§ 71-3-19. Maintenance while undergoing vocational rehabilitation.

An employee who as a result of injury is or may be expected to be totally or partially incapacitated for a remunerative occupation and who, under the direction of the commission is being rendered fit to engage in a remunerative occupation may, in the discretion of the commission under regulations adopted by it, receive additional compensation necessary for his maintenance, but such additional compensation shall not exceed Twenty-five Dollars ($25.00) a week for not more than fifty-two (52) weeks.

HISTORY: Codes, 1942, § 6998-10; Laws, 1948, ch. 354, § 8d; Laws, 1950, ch. 412, § 6; Laws, 1958, ch. 454, § 3; reenacted without change, Laws, 1982, 1980 ch 473, § 10; reenacted without change, Laws, 1990, ch. 405, § 10; Laws, 2012, ch. 522, § 5, eff from and after July 1, 2012.

Editor's Notes — Laws of 2012, ch. 522, §§ 10 and 11, provide:

"SECTION 10. The Workers' Compensation Commission shall promulgate a written statement specifying the changes made to the Workers' Compensation Law by this act to every employer in this state subject to the Workers' Compensation Law. Within ten (10) days of receipt of this written statement from the Commission, every employer shall post the Commission's statement in a conspicuous place or places in and about his place or places of business and adjacent to the Notice of Coverage as required by Section

71-3-81.

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, and shall apply to injuries occurring on or after July 1, 2012."

Cross References — Vocational Rehabilitation Law of Mississippi, see §§ 37-33-11 et seq.

RESEARCH REFERENCES

ALR.

Workers' compensation; vocational rehabilitation statutes. 67 A.L.R.4th 612.

Law Reviews.

Steiner, The Americans with Disabilities Act of 1990 and workers' compensation: the employees' perspective. 62 Miss. L. J. 631 (Spring, 1993).

§ 71-3-21. Temporary partial disability.

In case of temporary partial disability resulting in decrease of earning capacity, there shall be paid to the injured employee sixty-six and two-thirds percent (66-2/3%) of the difference between the injured employee's average weekly wages before the injury and his wage-earning capacity after the injury in the same or other employment, subject to the maximum limitations as to weekly benefits as set up in this chapter, payable during the continuance of such disability but in no case exceeding four hundred fifty (450) weeks or an amount greater than the multiple of four hundred fifty (450) weeks times sixty-six and two-thirds percent (66-2/3%) of the average weekly wage for the state.

HISTORY: Codes, 1942, § 6998-11; Laws, 1948, ch. 354, § 8e; Laws, 1950, ch. 412, § 6; Laws, 1958, ch. 454, § 3; Laws, 1968, ch. 559, § 6; Laws, 1972, ch. 522, § 4; Laws, 1976, ch. 459, § 3; Laws, 1979, ch. 442, § 3; Laws, 1981, ch. 341, § 3; reenacted, Laws, 1982, ch. 473, § 11; Laws, 1984, ch. 402, § 3; Laws, 1988, ch. 446, § 4; reenacted without change, Laws, 1990, ch. 405, § 11, eff from and after July 1, 1990.

Editor's Notes — Laws of 1988, ch. 446, § 6, provides as follows:

"SECTION 6. This act shall take effect and be in force from and after July 1, 1988; provided, however, the increase in benefits allowed under this act shall apply only to claims arising on or after July 1, 1988."

Cross References — Temporary total disability, see § 71-3-17.

Determination of wages, see § 71-3-31.

JUDICIAL DECISIONS

1. In general.

Circuit court erred in dismissing the claims with prejudice where nothing in a previous Mississippi Workers' Compensation Commission decision or prior precedents foreclosed a claim for bad faith denial of temporary partial disability benefits, even if it may have been difficult to prove bad faith. Hardaway v. Howard Indus., 211 So. 3d 718, 2016 Miss. App. LEXIS 331 (Miss. Ct. App. 2016).

Circuit court properly dismissed the employees' bad faith lawsuits against their employer and a workers' compensation administrator where the employees had filed the lawsuits prior to obtaining a final judgment that they were entitled to the workers' compensation benefits allegedly denied in bad faith. Hardaway v. Howard Indus., 211 So. 3d 718, 2016 Miss. App. LEXIS 331 (Miss. Ct. App. 2016).

Workers' Compensation Commission did not err in determining that the claimant was entitled to temporary partial disability benefits based on a difference between his pre-injury and actual post-injury wages despite the employer's evidence of fluctuations in overtime hours. Howard Indus. v. Hardaway, 191 So. 3d 1257, 2015 Miss. App. LEXIS 465 (Miss. Ct. App. 2015), cert. denied, 202 So. 3d 208, 2016 Miss. LEXIS 207 (Miss. 2016).

Employee was entitled to temporary disability benefits under Miss. Code Ann. § 71-3-21 for a certain period of time, and only for those periods within that time when the employee was, because of the injury, unable to work and earn full pay, and the case was remanded to reflect this fact; it was error to have awarded the employee a total amount of temporary benefits under Miss. Code Ann. § 71-3-17(b), with a credit to the employer for any compensation earned by the employee during that time, because this was not a total disability, and this calculation did not lead to the proper credit. Howard Indus. v. Robinson, 846 So. 2d 245, 2002 Miss. App. LEXIS 574 (Miss. Ct. App. 2002).

The claimant was not entitled to temporary partial disability benefits for the period during which he received more compensation for his employment in a new position than in his previous jobs. City of Laurel v. Blackledge, 1999 Miss. App. LEXIS 333 (Miss. Ct. App. June 22, 1999), sub. op., 755 So. 2d 573, 2000 Miss. App. LEXIS 88 (Miss. Ct. App. 2000).

Against the argument that having once found permanent partial disability, the commission should not thereafter make findings of temporary disability since such would prolong permanent payments on a subsequent finding of a new temporary disability, the commission properly awarded temporary disability after having found permanent partial disability where the evidence supported the award and the order allowed credit for benefits paid. Weaver Pants Co. v. Duncan, 231 So. 2d 489, 1970 Miss. LEXIS 1590 (Miss. 1970).

To require a hearing each two weeks to determine whether temporary disability continues would not be reasonable. Komp Equipment Co. v. Clinton, 236 Miss. 560, 112 So. 2d 541, 1959 Miss. LEXIS 351 (Miss. 1959).

The commission, in determining the period for which compensation for temporary disability should be allowed, following supreme court's affirmance of an award made by an attorney-referee, should require payment from the making of the award to the date of its approval by the commission. Jackson Ready-Mix Concrete v. Young, 236 Miss. 550, 111 So. 2d 255, 1959 Miss. LEXIS 349 (Miss. 1959).

Temporary disability is not conclusively presumed to continue until the appellate court's affirmance of an award therefor, so as to require payments of compensation for the period of pendency of the appeal. Jackson Ready-Mix Concrete v. Young, 236 Miss. 550, 111 So. 2d 255, 1959 Miss. LEXIS 349 (Miss. 1959).

RESEARCH REFERENCES

ALR.

Workers' compensation: bonus as factor in determining amount of compensation. 84 A.L.R.4th 1055.

Am. Jur.

36 Am. Jur. Trials 573, Worker?s Compensation: Compensability of Multiple Sclerosis.

CJS.

99 C.J.S., Workers' Compensation §§ 545-549, 551-555, 582 et seq.

§ 71-3-23. Hernia.

In all cases of claim for hernia, it shall be shown by a preponderance of the evidence:

(a) That the descent or protrusion of the hernia or rupture immediately followed as the result of sudden effort, severe strain, or the application of force to the abdominal wall;

(b) That there was severe pain in the region of the hernia or rupture;

(c) That there has been no descent or protrusion of the hernia or rupture prior to the accident for which compensation is claimed;

(d) That the physical distress resulting from the descent or protrusion of the hernia or rupture was noticed immediately by claimant, and communicated to his employer within a reasonable time; and

(e) That the physical distress following the descent or protrusion of the hernia or rupture was such as to require the attendance of a licensed physician or surgeon within five (5) days after the injury for which compensation is claimed. Postoperative hernias shall be considered as original hernias.

In every case of hernia or rupture as above defined, it shall be the duty of the employer forthwith to provide the necessary and proper medical, surgical, and hospital care and attention to effectuate a cure by radical operation of said hernia or rupture, and to pay compensation under the provisions of paragraph (b) of Section 71-3-17, not exceeding, however, a period of twenty-six (26) weeks.

In case the employee shall refuse to permit such operation, it shall be the duty of the employer to provide all necessary first aid, medical and hospital care and services, to supply the proper and necessary truss or other mechanical appliance to enable said employee to resume work, and shall further pay compensation under the provisions of paragraph (b) of Section 71-3-17, not exceeding, however, the period of thirteen (13) weeks.

In case death results within a period of one (1) year, either from the hernia or rupture or from the radical operation thereof, compensation shall be paid the dependents as provided in other death cases under this chapter.

HISTORY: Codes, 1942, § 6998-12; Laws, 1948, ch. 354, § 8f; Laws, 1950, ch. 412, § 6; Laws, 1958, ch. 454, § 3; Laws, 1960, ch. 280; reenacted without change, Laws, 1982, ch. 473, § 12; reenacted without change, Laws, 1990, ch. 405, § 12, eff from and after July 1, 1990.

Cross References — Compensation for death, see § 71-3-25.
Determination of wages, see § 71-3-31.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Existence of pain.
3. Previous descent or protrusion.
4. Attendance of physician.
5. Death.
6. Amount of recovery.

1. In general.

This section [Code 1942, § 6998-12] applies only if the hernia results from an accidental injury that arose out of and in the course of the employee's employment, but where an employee sustains internal injuries while on the job which require surgical entering into the abdomen which results in a postoperative hernia, this section has no application. Con-Plex, Inc. v. Clack, 207 So. 2d 83, 1968 Miss. LEXIS 1593 (Miss. 1968).

The required preponderance may be produced by circumstantial evidence. Williams v. Alwyne Jordan Curing Plant, 244 Miss. 685, 145 So. 2d 686, 1962 Miss. LEXIS 496 (Miss. 1962).

This section [Code 1942, § 6998-12] applies in the case of a hernia caused by the workman's accidental contact with a moving wheel. Rogers v. Vicksburg Hardwood Co., 240 Miss. 780, 129 So. 2d 124, 1961 Miss. LEXIS 510 (Miss. 1961).

This section [Code 1942, § 6998-12] includes diaphragmatic hernias. Commans v. Ingalls Shipbuilding Corp., 240 Miss. 373, 128 So. 2d 114, 1961 Miss. LEXIS 472 (Miss. 1961).

In a workmen's compensation case, where judgment of circuit court and the award of commission merely adjudicated that the claimant should have all the benefits of the Workmen's Compensation Law as related to hernia without awarding any definite fixed sum of money, on appeal the supreme court, upon affirmance of judgment, could not allow damages. J. & B. Mfg. Co. v. Cochran, 216 Miss. 336, 62 So. 2d 378, 1953 Miss. LEXIS 642 (Miss. 1953).

Under this section [Code 1942, § 6998-12], when, as a result of sudden effort or severe strain, or both, there is a severe strain in the hernial region, and the employee is rendered unable to work, if the pain is sufficient to require the services of a doctor within forty-eight hours, and if the occurrence is communicated to his employer within that time, the hernia is compensable. Lucedale Veneer Co. v. Rogers, 211 Miss. 613, 48 So. 2d 148, 1950 Miss. LEXIS 356 (Miss. 1950).

2. Existence of pain.

Description by an employee that the sensation was like a bee sting, and the pain became worse in the afternoon and severe that night conclusively established existence of pain, required in cases of claim for hernia in that there was severe pain in the hernial region. Lucedale Veneer Co. v. Rogers, 211 Miss. 613, 48 So. 2d 148, 1950 Miss. LEXIS 356 (Miss. 1950).

3. Previous descent or protrusion.

Where the record showed that there had been a previous descent or protrusion of hernia before the accident in question, appellants failed to bring their claim within the requirements of this section [Code 1942, § Dependents of Flood v. NCO Open Mess, etc., 238 Miss. 207, 118 So. 2d 294, 1960 Miss. LEXIS 397 (Miss. 1960).

Where the evidence not only failed to prove that there had been no descent or protrusion of the hernia prior to the accident for which compensation was claimed, but, in fact, clearly showed to the contrary, the action of the commission in denying compensation to the claimant would be affirmed. Ray v. Wells-Lamont Glove Factory, 236 Miss. 154, 109 So. 2d 544, 1959 Miss. LEXIS 304 (Miss. 1959).

While generally a pre-existing disease or infirmity does not disqualify a claim under the "arising out of employment" requirements of the Workmen's Compensation Law if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the death or disability for which compensation is sought, in hernia cases effect must be given to this section [Code 1942, § 6998-12]. Fagan v. Wells-Lamont, Inc., 228 Miss. 660, 89 So. 2d 632, 1956 Miss. LEXIS 560 (Miss. 1956).

In view of this section [Code 1942, § 6998-12] claimant's failure to prove that there had been no descent or protrusion of her incisional hernia prior to the accident for which compensation was claimed barred recovery benefits for the aggravation of a pre-existing hernia. Fagan v. Wells-Lamont, Inc., 228 Miss. 660, 89 So. 2d 632, 1956 Miss. LEXIS 560 (Miss. 1956).

The provision of this section [Code 1942, § 6998-12] that a claimant must prove by a preponderance of the evidence that there has been no descent or protrusion of a hernia prior to the accident for which compensation is claimed is a statutory prerequisite to recovery for hernia claims. Dependents of Flood v. NCO Open Mess, etc., 238 Miss. 207, 118 So. 2d 294, 1960 Miss. LEXIS 397 (Miss. 1960); Ryan Supply Co. v. Brett, 222 Miss. 30, 75 So. 2d 75, 1954 Miss. LEXIS 613 (Miss. 1954).

4. Attendance of physician.

A claimant for workmen's compensation benefits who suffered a hernia while carrying heavy pipe and immediately went to see the company's nurse, who advised him that she would send him to a doctor if it happened again, satisfied the statutory requirement that physical distress following the sudden protrusion of a hernia must require the attendance of a doctor within five days after the injury; the fact that he did not actually see a doctor within five days did not defeat the claim. Bechtel Constr. Co. v. Bartlett, 371 So. 2d 398, 1979 Miss. LEXIS 2065 (Miss. 1979).

Where claimant was injured on June 10, 1964, did not see a doctor until 55 days later on August 4, 1964, did not quit work until 57 days after his injury, and was operated on for an inguinal hernia on August 7, 1964, the evidence was insufficient to establish that he "required" the attendance of a physician or surgeon within 5 days following his injury. Biloxi Motor Co. v. Barry, 192 So. 2d 403, 1966 Miss. LEXIS 1254 (Miss. 1966).

In the provision in this section [Code 1942, § 6998-12] which requires attendance of physician within five days after injury for which compensation is claimed, the word "require" means to want, to need, to call for, and this section does not require that injured employee in a hernia case be denied compensation because he was not actually attended by a licensed physician within the five-day period. Lindsey v. Ingalls Shipbuilding Corp., 219 Miss. 437, 68 So. 2d 872, 1954 Miss. LEXIS 351 (Miss. 1954).

Where a workman employed as a ship fitter sustained an injury on Monday while he was engaged in helping to remove some heavy brackets from bulkhead just before quitting time and then he went home and remained in bed, suffering severe pain until the following Monday when he reported to the company hospital and was told that he had hernia, the employee was entitled to compensation for hernia even though he had not been attended by a physician until one week after the injury. Lindsey v. Ingalls Shipbuilding Corp., 219 Miss. 437, 68 So. 2d 872, 1954 Miss. LEXIS 351 (Miss. 1954).

Where hernia suffered by compensation claimant did not require attendance of physician until eight or nine days thereafter, claimant was precluded from recovering compensation therefor by paragraph 4 of Code 1942, § 6998-12 [now subsection (e) of Code 1972, § 73-3-23]. Meador v. Dollar Store, 217 Miss. 447, 64 So. 2d 574, 1953 Miss. LEXIS 449 (Miss. 1953).

5. Death.

No distinction is made between disability and death claims in hernia cases. Dependents of Flood v. NCO Open Mess, etc., 238 Miss. 207, 118 So. 2d 294, 1960 Miss. LEXIS 397 (Miss. 1960).

The final sentence of this section [Code 1942, § 6998-12] is not construable as meaning that death claims resulting from hernia or operations therefor are not restricted by the five precedent requirements set out in the section. Dependents of Flood v. NCO Open Mess, etc., 238 Miss. 207, 118 So. 2d 294, 1960 Miss. LEXIS 397 (Miss. 1960).

6. Amount of recovery.

Where substantial evidence establishes a causal connection between claimant's surgery for repair of a hernia and the physical discomforts and disabilities suffered since that time, a claimant is not necessarily limited to the specific award for hernia alone. Knight v. Stachel, 193 So. 2d 593, 1967 Miss. LEXIS 1554 (Miss. 1967).

Compensation is not limited to that provided for hernia where repair surgery induced a coronary occlusion. McBride v. Wetmore & Parman, Inc., 241 Miss. 743, 133 So. 2d 261, 1961 Miss. LEXIS 395 (Miss. 1961).

One claiming compensation in addition to the statutory allowance for a hernia has the burden of showing that the injury caused additional disability resulting in a greater and more prolonged incapacity than the hernia. Rivers Constr. Co. v. Dubose, 241 Miss. 527, 130 So. 2d 865, 1961 Miss. LEXIS 371 (Miss. 1961).

That a hernia injury affects a nerve in the vicinity, causing severe pain, is not ground for additional compensation. Rivers Constr. Co. v. Dubose, 241 Miss. 527, 130 So. 2d 865, 1961 Miss. LEXIS 371 (Miss. 1961).

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82 Am. Jur. 2d, Workers' Compensation § 279.
25 Am. Jur. Pl & Pr Forms (Rev), Workmen's Compensation, Forms 54, 116.
5 Am. Jur. Proof of Facts 699, Hernia.
7 Am. Jur. Proof of Facts 3d 143, Workers' Compensation for Attendant Care Services by Family Members.

CJS.
99 C.J.S., Workers' Compensation §§ 344, 345.

§ 71-3-25. Compensation for death.

If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

(a) An immediate lump-sum payment of One Thousand Dollars ($1,000.00) to the surviving spouse, in addition to other compensation benefits.

(b) Reasonable funeral expenses not exceeding Five Thousand Dollars ($5,000.00) exclusive of other burial insurance or benefits.

(c) If there be a surviving spouse and no child of the deceased, to such surviving spouse thirty-five percent (35%) of the average wages of the deceased during widowhood or dependent widowhood and, if there be a surviving child or children of the deceased, the additional amount of ten percent (10%) of such wages for each such child. In case of the death or remarriage of such surviving spouse, any surviving child of the deceased employee shall have his compensation increased to fifteen percent (15%) of such wages, provided that the total amount payable shall in no case exceed sixty-six and two-thirds percent (66-2/3%) of such wages, subject to the maximum limitations as to weekly benefits as set up in this chapter. The commission may, in its discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor dependent. In the absence of such a requirement, the appointment of a guardian for such purposes shall not be necessary, provided that if no legal guardian be appointed, payment to the natural guardian shall be sufficient.

(d) If there be a surviving child or children of the deceased but no surviving spouse, then for the support of each such child twenty-five percent (25%) of the wages of the deceased, provided that the aggregate shall in no case exceed sixty-six and two-thirds percent (66-2/3%) of such wages, subject to the maximum limitations as to weekly benefits as set up in this chapter.

(e) If there be no surviving spouse or child, or if the amount payable to a surviving spouse and to children shall be less in the aggregate than sixty-six and two-thirds percent (66-2/3%) of the average wages of the deceased, subject to the maximum limitations as to weekly benefits as set up in this chapter, then for the support of grandchildren or brothers and sisters, if dependent upon the deceased at the time of the injury, fifteen percent

(15%) of such wages for the support of each such person; and for the support of each parent or grandparent of the deceased, if dependent upon him at the time of injury, fifteen percent (15%) of such wages during such dependency. But in no case shall the aggregate amount payable under this subsection exceed the difference between sixty-six and two-thirds percent (66-⅔%) of such wages and the amount payable as hereinbefore provided to surviving spouse and for the support of surviving child or children, subject to the maximum limitations as to weekly benefits as set up in this chapter.

(f) The total weekly compensation payments to any or all beneficiaries in death cases shall not exceed the weekly benefits as set up in this chapter and shall in no case be paid for a longer period than four hundred fifty (450) weeks or for a greater amount than the multiple of four hundred fifty (450) weeks times sixty-six and two-thirds percent (66-⅔%) of the average weekly wage for the state.

(g) All questions of dependency shall be determined as of the time of the injury. A surviving spouse, child or children shall be presumed to be wholly dependent. All other dependents shall be considered on the basis of total or partial dependence as the facts may warrant.

HISTORY: Codes, 1942, § 6998-13; Laws, 1948, ch. 354, § 9; Laws, 1950, ch. 412, § 7; Laws, 1958, ch. 454, § 4; Laws, 1968, ch. 559, § 7; Laws, 1972, ch. 522, § 5; Laws, 1976, ch. 459, § 4; Laws, 1979, ch. 442, § 4; Laws, 1981, ch. 341, § 4; reenacted by Laws, 1982, ch. 473, § 13; Laws, 1984, ch. 402, § 4; Laws, 1984, ch. 499, § 2; Laws, 1988, ch. 446, § 5; reenacted without change, Laws, 1990, ch. 405, § 13; Laws, 2012, ch. 522, § 6, eff from and after July 1, 2012.

Editor's Notes — Laws of 1988, ch. 446, § 6, provides as follows:

"SECTION 6. This act shall take effect and be in force from and after July 1, 1988; provided, however, the increase in benefits allowed under this act shall apply only to claims arising on or after July 1, 1988.

"For claims arising prior to July 1, 1988, the following provisions of Section 71-3-25 (as it appeared prior to the amendment in 1988 and reenactment in 1990) shall apply:

"If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

"(a) An immediate lump sum payment of two hundred fifty dollars ($250.00) to the surviving spouse, in addition to other compensation benefits.

"(b) Reasonable funeral expenses not exceeding two thousand dollars ($2,000.00) exclusive of other burial insurance or benefits.

"(c) If there be a surviving spouse and no child of the deceased, to such surviving spouse thirty-five percent (35%) of the average wages of the deceased during widowhood or dependent widowhood and, if there be a surviving child or children of the deceased, the additional amount of ten percent (10%) of such wages for each such child. In case of the death or remarriage of such surviving spouse, any surviving child of the deceased employee shall have his compensation increased to fifteen percent (15%) of such wages, provided that the total amount payable shall in no case exceed sixty-six and two-thirds percent (66-⅔%) of such wages, subject to the maximum limitations as to weekly benefits as set up in this chapter. The commission may, in its discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor dependent. In the absence of such a requirement, the appointment of a guardian for such purposes shall not be necessary, provided that if no legal guardian be appointed, payment to the natural guardian shall be sufficient.

"(d) If there be a surviving child or children of the deceased but no surviving spouse, then for the support of each such child twenty-five percent (25%) of the wages of the deceased, provided that the aggregate shall in no case exceed sixty-six and two-thirds percent (66-⅔%) of such wages, subject to the maximum limitations as to weekly benefits as set up in this chapter.

"(e) If there be no surviving spouse or child, or if the amount payable to a surviving spouse and to children shall be less in the aggregate than sixty-six and two-thirds percent (66-⅔%) of the average wages of the deceased, subject to the maximum limitations as to weekly benefits as set up in this chapter, then for the support of grandchildren or brothers and sisters, if dependent upon the deceased at the time of the injury, fifteen percent (15%) of such wages for the support of each such person; and for the support of each parent or grandparent of the deceased, if dependent upon him at the time of injury, fifteen percent (15%) of such wages during such dependency. But in no case shall the aggregate amount payable under this subsection exceed the difference between sixty-six and two-thirds percent (66-⅔%) of such wages and the amount payable as hereinbefore provided to surviving spouse and for the support of surviving child or children, subject to the maximum limitations as to weekly benefits as set up in this chapter.

"(f) The total weekly compensation payments to any or all beneficiaries in death cases shall not exceed the weekly benefits as set up in this chapter and shall in no case be paid for a longer period than four hundred fifty (450) weeks or a greater amount than fifty-six thousand seven hundred dollars ($56,700.00) until June 30, 1985; as to claims arising on and after July 1, 1985, such payments shall not exceed fifty-nine thousand eight hundred fifty dollars ($59,850.00); and as to claims arising on and after July 1, 1986, such payments shall not exceed sixty-three thousand dollars ($63,000.00).

"(g) All questions of dependency shall be determined as of the time of the injury. A surviving spouse, child or children shall be presumed to be wholly dependent. All other dependents shall be considered on the basis of total or partial dependence as the facts may warrant."

Laws of 2012, ch. 522, §§ 10 and 11, provide:

"SECTION 10. The Workers' Compensation Commission shall promulgate a written statement specifying the changes made to the Workers' Compensation Law by this act to every employer in this state subject to the Workers' Compensation Law. Within ten (10) days of receipt of this written statement from the Commission, every employer shall post the Commission's statement in a conspicuous place or places in and about his place or places of business and adjacent to the Notice of Coverage as required by Section 71-3-81.

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, and shall apply to injuries occurring on or after July 1, 2012."

Cross References — Minimum and maximum compensation, see § 71-3-13.

Determination of wages, see § 71-3-31.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
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1. In general.

Since a claim for disability is separate and distinct from a claim for death benefits, the 1960 amendment to subsection (9) of Code 1942, § 6998-02 [now subsection (i) of Code 1972, § 71-3-3], requiring that incapacity and the extent thereof be supported by medical findings, did not eliminate the presumption of causal connection between the employment and death occurring while the employee is engaged in the duties of his employment, particularly since the 1960 amendment did not affect subsection (3) of Code 1942, § 6998-02 [now subsection (c) of Code 1972, § 71-3-3]. L. B. Priester & Son, Inc. v. Bynum, 244 Miss. 185, 137 So. 2d 907, 1962 Miss. LEXIS 438 (Miss. 1962).

Legislature did not purpose and intend to provide greater benefits for permanent partial disability than for death or permanent total disability, and the court in construing the Workmen's Compensation Law should give effect to the legislative purpose and policy although such construction may go beyond the letter of the law. J. F. Crowe Well Servicing Contractor v. Fielder, 224 Miss. 353, 80 So. 2d 29, 1955 Miss. LEXIS 499 (Miss. 1955).

2. Dependents, generally.

Purposes and objectives of Workers' Compensation Act has rational basis and furthers valid state purpose, even though it precludes recovery by certain parties, such as non-dependants. Dependents of Nosser v. Natchez Jitney Jungle, Inc., 511 So. 2d 141, 1987 Miss. LEXIS 2673 (Miss. 1987).

Where a lump sum settlement has been effected in compromise of a doubtful and disputed claim, the proceeds should be distributed among the widow and minor children of the deceased employee following the purpose of subdivision (c) of this section [Code 1942, § 6998-13]. Griffing v. Marquette Cement Mfg. Co., 253 Miss. 338, 175 So. 2d 180, 1965 Miss. LEXIS 991 (Miss. 1965).

Where, in absence of an apportionment under Code 1942, § 6998-04 by reason of pre-existing disease, claimant would receive the statutory maximum, such maximum is the proper basis of apportionment. Southeastern Constr. Co. v. Dependent of Dodson, 247 Miss. 1, 153 So. 2d 276, 1963 Miss. LEXIS 277 (Miss. 1963).

In order to be a dependent, the claimant must show that he had reasonable grounds to anticipate future support from the deceased employee. Mid-State Paving Co. v. Farthing, 233 Miss. 333, 101 So. 2d 850, 1958 Miss. LEXIS 386 (Miss. 1958).

The provision of the Workmen's Compensation Law to the effect that questions of dependency shall be determined at the time of the injury has reference to the dependency which generates the original right to an award, and does not control the question of determination of a right to continue receiving an award. Franklin v. Jackson, 231 Miss. 497, 95 So. 2d 794, 1957 Miss. LEXIS 534 (Miss. 1957).

3. —Spouses.

Provisions of former § 71-3-25 differentiating between widow and widower in award of death benefits are unconstitutional. Wilson v. Service Broadcasters, Inc. (WDAM), 483 So. 2d 1339, 1986 Miss. LEXIS 2387 (Miss. 1986).

The provision giving a surviving wife a percentage of decedent's average wages is qualified by the provision of subsection (f) of Code 1942, § 6998-13; fixing the permissible maximum of payments. Southeastern Constr. Co. v. Dependent of Dodson, 247 Miss. 1, 153 So. 2d 276, 1963 Miss. LEXIS 277 (Miss. 1963).

Unless disability of minority has been removed by court decree, a guardian should be appointed to receive compensation for a minor widow. Dapsco, Inc. v. Dependent of Upchurch, 243 Miss. 427, 138 So. 2d 287, 1962 Miss. LEXIS 359 (Miss. 1962).

Lump sum settlement of compensation to widow set aside where widow had become ineligible to receive benefits by remarrying before payment, and had knowingly made a false statement as to necessity for lump sum payment. Dapsco, Inc. v. Dependent of Upchurch, 243 Miss. 427, 138 So. 2d 287, 1962 Miss. LEXIS 359 (Miss. 1962).

A finding that the second wife of a deceased employee, as well as her children by a former marriage, were entitled to share in the death benefits resulting from the employee's death, was affirmed where there was evidence showing that the stepchildren were dependent upon the decedent for support, and that the wife and children were not living apart from the decedent without justifiable excuse. Bolton v. Easterling, 232 Miss. 236, 98 So. 2d 658, 1957 Miss. LEXIS 463 (Miss. 1957).

The term widow or widower as contemplated in the Workmen's Compensation Law shall not apply to any person who has, since his or her separation from decedent, entered into a ceremonial marriage or lived in open adultery with another. Watkins v. Taylor, 216 Miss. 822, 63 So. 2d 225, 1953 Miss. LEXIS 701 (Miss. 1953).

The words "surviving wife" as used in the Workmen's Compensation Law mean widow entitled to compensation, and where the wife of deceased has entered into marriage with another long prior to death of deceased, and lived with another man and was supported by him, each illegitimate child of deceased was entitled to compensation. Watkins v. Taylor, 216 Miss. 822, 63 So. 2d 225, 1953 Miss. LEXIS 701 (Miss. 1953).

Where a man and woman lived together for three years and a child was born, but they did not hold themselves out as husband and wife, and both later separated and each of them contracted a ceremonial marriage, this was insufficient evidence to substantiate a common law marriage and the man's ceremonial marriage was valid, and the widow was entitled to compensation upon the death of her husband. United States Fidelity & Guaranty Co. v. Smith, 211 Miss. 573, 52 So. 2d 351, 1951 Miss. LEXIS 389 (Miss. 1951).

In computing compensation benefits to a widow, the probability of remarriage before the expiration of the 450 weeks during which the widow is entitled to compensation must be taken into account. United States Fidelity & Guaranty Co. v. Smith, 211 Miss. 573, 52 So. 2d 351, 1951 Miss. LEXIS 389 (Miss. 1951).

4. —Children, stepchildren and grandchildren.

Workers' Compensation Commission's decision that the child was not a dependent of the decedent and thus not entitled to an award of death benefits was supported by substantial evidence; because of the child's age (26-years old) and marital status (married), an award of death benefits to her would not be proper unless she was wholly dependent on the decedent, and given the myriad income sources available to and used by the child, the appellate court could hardly view the receipt of such income as sporadic or insubstantial. Descendants of Gilmer v. Nolen Sistrunk Trucking, Inc., 892 So. 2d 825, 2004 Miss. App. LEXIS 867 (Miss. Ct. App. 2004), cert. denied, 893 So. 2d 1061, 2005 Miss. LEXIS 80 (Miss. 2005).

Workers' Compensation Commission's decision that the decedent's grandchildren were not dependents and thus not entitled to death benefits was supported by substantial evidence, because there was no indication in the record that the grandchildren knew the decedent was providing support to them, much less that they expected his support in the future Descendants of Gilmer v. Nolen Sistrunk Trucking, Inc., 892 So. 2d 825, 2004 Miss. App. LEXIS 867 (Miss. Ct. App. 2004), cert. denied, 893 So. 2d 1061, 2005 Miss. LEXIS 80 (Miss. 2005).

Grandchild to whom deceased stood in place of parent for at least one year prior to injury elevated to child status, where uncontroverted evidence showed that decedent had stood in place of granddaughter's father all of her life, and she called him "U.S. Rubber Reclaiming Co. v. Dependents of Stampley, 508 So. 2d 673, 1987 Miss. LEXIS 2599 (Miss. 1987).

Under Miss Code 1972 §§ 71-3-3 & 71-3-25, which define a "child" and "grandchild" and prescribe different workmen's compensation benefits for each, two minor natural grandchildren, with whom the Commission found that decedent stood in loco parentis for at least one year prior to the time of his injury and death, would be elevated to the status of children for workmen's compensation benefit purposes. Longleaf Forest Products, Inc. v. Hopkins, 349 So. 2d 523, 1977 Miss. LEXIS 2150 (Miss. 1977).

Daughter unmarried at time of injury is ineligible for death benefits as a dependent where she was married at the time of death. Futorian-Stratford Furniture Co. v. Dependents of Oswalt, 249 Miss. 35, 162 So. 2d 645, 1964 Miss. LEXIS 373 (Miss. 1964).

A married daughter, living apart from her husband and with the deceased at the time of his death, who was over the age of 18 years, not wholly dependent upon the deceased, and not incapable of self-support by reasons of mental or physical disability, was precluded from the allowance of any benefits for the death of her father. Thrash v. Jackson Auto Sales, Inc., 232 Miss. 845, 100 So. 2d 574, 1958 Miss. LEXIS 338 (Miss. 1958).

Where there was evidence showing that the stepchildren were dependent upon decedent for support, and that the wife and stepchildren were not living apart from decedent without justifiable excuse, a finding that the second wife of a deceased employee, as well as her children by a former marriage, were entitled to share in the death benefits was affirmed. Bolton v. Easterling, 232 Miss. 236, 98 So. 2d 658, 1957 Miss. LEXIS 463 (Miss. 1957).

Even though a child qualifies as a dependent as of the time of injury because he is then under 18 years of age, he ceases to be a child within the meaning of the Workmen's Compensation Law when he reaches the age of 18 years unless he is incapable of self-support by reason of mental or physical disability. Franklin v. Jackson, 231 Miss. 497, 95 So. 2d 794, 1957 Miss. LEXIS 534 (Miss. 1957).

Since one of the primary purposes of the Workmen's Compensation Law is to relieve society of the burden of supporting helpless children in orphanages and public almshouses, it would be inconsistent with the primary purpose of that law to allow children over the age of 18 years, who are physically and mentally able to support themselves, to receive compensation and deplete the award to the detriment of younger children who, because of age, are unable to support themselves. Franklin v. Jackson, 231 Miss. 497, 95 So. 2d 794, 1957 Miss. LEXIS 534 (Miss. 1957).

The provision that children under 18 are presumed to be dependent creates a rule of substantive law to the effect that a child under 18 years of age is conclusively presumed to be dependent. Anderson-Tully Co. v. Wilson, 221 Miss. 656, 74 So. 2d 735, 1954 Miss. LEXIS 573 (Miss. 1954).

The time of employee's death is the critical date in determining whether his daughter was dependent upon him under the Workmen's Compensation Law. Accordingly, where a daughter of deceased employee was under 18 at the time of his death and married a month after his death and was supported by her husband afterwards, the compensation to the daughter would not be terminated as of the date of her marriage. Anderson-Tully Co. v. Wilson, 221 Miss. 656, 74 So. 2d 735, 1954 Miss. LEXIS 573 (Miss. 1954).

5. —Illegitimate children.

Death benefits payable to dependent children under the Workmen's Compensation Law are not limited to benefits payable to the legitimate minor children of deceased. Stanley v. McLendon, 220 Miss. 192, 70 So. 2d 323, 1954 Miss. LEXIS 425 (Miss. 1954).

Where wife of deceased has entered into marriage with another long prior to death of deceased and lived with another man and was supported by him, each illegitimate child of deceased was entitled to compensation. Watkins v. Taylor, 216 Miss. 822, 63 So. 2d 225, 1953 Miss. LEXIS 701 (Miss. 1953).

6. —Parents.

Mother of decedent was not entitled to bring wrongful death action where decedent was killed when he was struck by car while working on highway project; contention that wrongful death statute controlled over Workers' Compensation provision which provided that it would be exclusive remedy was rejected; argument that because mother was not dependent on decedent, exclusive remedy provision in death benefit cases did not apply was also rejected, because act intended to provide exclusive remedy growing out of employer-employee relationship, and different result would subject employer in many instances to double liability. Estate of Morris v. W. E. Blain & Sons, Inc., 511 So. 2d 945, 1987 Miss. LEXIS 2698 (Miss. 1987).

Mother, brothers, and sisters were entitled to Worker's Compensation death benefits as dependents of decedent, although decedent, who was 12 years of age when he died, had only been working for one and one-half days prior to fatal injury, because this was not first job he had held, and both decedent and his brothers and sisters gave money earned to mother for support of family; condition of dependency is fact determination to be made as of time of worker's death; and, term "dependent" must be liberally interpreted and includes those partially dependent as well as those wholly dependent. Sawyer v. Head, 510 So. 2d 472, 1987 Miss. LEXIS 2427 (Miss. 1987).

The Workman's Compensation Commission's finding that the decedent's parents were partial dependents of the decedent at the time of his death was supported by substantial evidence, despite the fact that the parents enjoyed a substantial income from their employment. Union Camp, Inc. v. Dependents of McCall, 426 So. 2d 796, 1983 Miss. LEXIS 2431 (Miss. 1983).

Where the average weekly wage of the deceased employee was $35.45, and the father and two minor brothers of the deceased employee were totally dependent upon him, the aggregate amount of weekly payments to the three dependents would be $15.96 and, after the father's death, the aggregate weekly payments to be made to the two minor brothers would be Truck Trailer Sales & Service Co. v. Moore, 244 Miss. 317, 141 So. 2d 541, 1962 Miss. LEXIS 451 (Miss. 1962).

Evidence that deceased employee had made cash contributions to his parents on numerous, although irregular occasions, had done the heavy manual work on their farm, and other than at times when he was working on construction projects, he had lived with his parents, except during a brief interval of an unsuccessful marriage, sustained the finding that the parents were partially dependent upon the employee, had reasonable grounds to anticipate continuing future support from him, and thus were dependents. Mid-State Paving Co. v. Farthing, 233 Miss. 333, 101 So. 2d 850, 1958 Miss. LEXIS 386 (Miss. 1958).

7. —Siblings.

Mother, brothers, and sisters were entitled to Worker's Compensation death benefits as dependents of decedent, although decedent, who was 12 years of age when he died, had only been working for one and one-half days prior to fatal injury, because this was not first job he had held, and both decedent and his brothers and sisters gave money earned to mother for support of family; condition of dependency is fact determination to be made as of time of worker's death; and, term "dependent" must be liberally interpreted and includes those partially dependent as well as those wholly dependent. Sawyer v. Head, 510 So. 2d 472, 1987 Miss. LEXIS 2427 (Miss. 1987).

Evidence was insufficient to support finding of dependency of sister of 12- year-old employee killed in course of employment, where at time of accident decedent had been living with father and stepmother while sister lived out of state with other relatives, though decedent gave money earned to his father and father sent money to relatives keeping sister, there was no evidence that decedent knew of disposition of his income, that decedent's earnings were used for sister's support, that sister had any reasonable expectation of receiving future money from decedent to be used for her support and maintenance and, under circumstances, expectancy of support by sister would be from her father, not her brother. Sawyer v. Head, 505 So. 2d 1199, 1987 Miss. LEXIS 2412 (Miss. 1987).

Where the average weekly wage of the deceased employee was $35.45 and the father and two minor brothers of the deceased employee were totally dependent upon him, the aggregate amount of weekly payments to the three dependents would be $15.96 and, after the father's death, the aggregate weekly payments to be made to the two minor brothers would be Truck Trailer Sales & Service Co. v. Moore, 244 Miss. 317, 141 So. 2d 541, 1962 Miss. LEXIS 451 (Miss. 1962).

The commission's determination as to dependency of a brother will be affirmed if supported by substantial evidence. Ross v. Ross, 240 Miss. 84, 126 So. 2d 512, 1961 Miss. LEXIS 434 (Miss. 1961).

A brother who, by reason of low intelligence and the loss of an arm, is incapable of holding a job and who received from the deceased employee regular monthly sums, without which he would have been destitute, may properly be found to have been entirely dependent upon him, though he earned a little money by sweeping a church and received occasional small gifts of money from another brother, who also paid a hospital bill. Ross v. Ross, 240 Miss. 84, 126 So. 2d 512, 1961 Miss. LEXIS 434 (Miss. 1961).

8. —Partial dependents.

The term "dependent" must be liberally interpreted, and includes those partially dependent as well as those wholly dependent, and one is dependent if he relies upon the employee, in whole or in part, for his support. Mid-State Paving Co. v. Farthing, 233 Miss. 333, 101 So. 2d 850, 1958 Miss. LEXIS 386 (Miss. 1958).

The legislature in drafting the Workmen's Compensation Law was well aware of the various kinds of compensation statutes, yet it failed to provide for any method of computing a reduced percentage of benefits for partial dependents, and the supreme court will not assume that the legislature intended to do so. Bradshaw v. Rudder, 227 Miss. 143, 85 So. 2d 778, 1956 Miss. LEXIS 665 (Miss. 1956).

The 1950 amendment to Code 1942, § 6998-07, providing for a minimum weekly compensation of $10.00 "except in partial dependency cases," permits the payment to a dependent under this section [Code 1942, § 6998-13] of an amount less than the minimum, (a) where his statutory compensation is less than that amount, and (b) where such dependent is partially and not wholly dependent on the deceased employee; if he is wholly dependent, then the $10.00 applies. Bradshaw v. Rudder, 227 Miss. 143, 85 So. 2d 778, 1956 Miss. LEXIS 665 (Miss. 1956).

The words in the latter part of this section [Code 1942, § 6998-13], that "all other dependents shall be considered on the basis of total or partial dependency as the facts may warrant," was intended to mean that such dependents shall be considered for the purpose of determining whether they are dependent on the basis of total or partial dependency as the facts may warrant, and the court should not insert after the verb "considered" the phrase "for the purpose of determining the amount of the award." and it was held that where surviving parents of deceased 18-year-old son were found to be partially dependent, they were entitled to 15% of his average weekly wage as provided by this section and not a percentage thereof estimated from the percentage of dependency. Bradshaw v. Rudder, 227 Miss. 143, 85 So. 2d 778, 1956 Miss. LEXIS 665 (Miss. 1956).

9. Effect of prior denial of compensation benefits.

An adverse judgment on a decedent's prior claim for compensation, based upon an alleged heart attack arising out of his employment as a truck operator, was res judicata and a bar to a subsequent claim based upon the same episode of heart attack by the decedent's widow for compensation for herself and her minor daughter as dependents of the decedent. Knox Glass Co. v. Dependents of Evans, 246 So. 2d 89, 1971 Miss. LEXIS 1389 (Miss. 1971).

An adverse decision on the merits of the claim of the employee while he was alive bars a dependency claim under the doctrine of res judicata, for the questions have already been fully litigated and all parties were involved, and necessarily so, in the manner in which the injury was received. Proctor v. Ingalls Shipbuilding Corp., 254 Miss. 907, 183 So. 2d 483, 1966 Miss. LEXIS 1586 (Miss. 1966).

10. Credit for other payments to deceased or dependents.

An employer who voluntarily procured life insurance on an employee was properly denied his request to have the proceeds of the life insurance credited as advance payment of compensation against workmen's compensation benefits he was required to pay, where the employer had not procured workmen's compensation insurance and did not qualify as a self-insurer. Hedgpeth v. Hair, 418 So. 2d 814, 1982 Miss. LEXIS 2121 (Miss. 1982).

11. Application of recovery from third party wrongdoer.

When a recovery is made by a compensation beneficiary from a third-party wrongdoer, the balance of the proceeds remaining after the payment of the collection costs shall be used to discharge all the liability of the employer or insurer, including that to accrue in the future as well as that already paid or accrued, and includes any liability for death benefits that might accrue under the case. Richardson v. United States Fidelity & Guaranty Co., 233 Miss. 375, 102 So. 2d 368, 1958 Miss. LEXIS 394 (Miss. 1958).

12. Review.

The time within which an award affirmed by the supreme court must be paid in order to avoid the statutory penalty runs from the time a suggestion of error was overruled, and not from the subsequent issue of the court's mandate. Decker v. Bryan Bros. Packing Co., 249 Miss. 6, 162 So. 2d 648, 1964 Miss. LEXIS 369 (Miss. 1964).

Although the original award did not allow an immediate lump sum payment, nor reasonable funeral expenses, nor for compensation payments to the deceased prior to his death, where there had been no appeal by the claimants from the decision by the attorney-referee or the commission, their cross appeals could not be considered by the supreme court upon an appeal by the employer and his compensation carrier. Dixie Pine Products Co. v. Dependents of Bryant, 228 Miss. 595, 89 So. 2d 589, 1956 Miss. LEXIS 551 (Miss. 1956).

The judgment of the lower court will be construed as giving effect to the statute which provides that the total amount payable shall in no case exceed 662/3 per cent of such wages, subject to maximum limitations as to weekly benefits as set up in the Mississippi Federated Cooperatives v. Jefferson, 224 Miss. 150, 79 So. 2d 723, 1955 Miss. LEXIS 471 (Miss. 1955).

13. Denial inappropriate.

Trial court erred when it affirmed the workers' compensation commission's denial of workers' compensation death benefits after an information systems manager was killed in car accident while returning to work from colleague's house after the plant had been evacuated because, she was fulfilling her duties within the period of her employment and was furthering the business of her employer. At the accident scene, it was discovered that the decedent had been in possession of some computer backup tapes and a laptop computer, and previously her supervisor had instructed the decedent to obtain all of the vital information that she could, including the tapes and the laptop computer, in the event of a plant evacuation. Duke ex rel. Duke v. Parker Hannifin Corp., 925 So. 2d 893, 2005 Miss. App. LEXIS 907 (Miss. Ct. App. 2005).

14. Denial appropriate.

Appellate court erred in reversing a judgment by the Workers' Compensation Commission finding that a deceased employee's biological children were not entitled to his death benefits where the statutory lien only applied to benefits payable to an employee who had delinquent child support, and the employee's parental rights were terminated when the mother's new husband adopted them. Young ex rel. Heirs of Tewksbury v. Air Masters Mech., Inc., 294 So. 3d 1172, 2020 Miss. LEXIS 96 (Miss. 2020).

Workers' Compensation Commission properly denied death and disability benefits to an employee's mother because while a physical injury occurred when a filing cabinet fell on the employee, there was overwhelming evidence that her mental decompensation was from preexisting psychological issues-not the alleged filing-cabinet injury-and led to her increased dependence on a destructive relationship, substance abuse, and ultimate death from a drug overdose. Hodges v. Heritage Props. (In re Estate of Cleaveland), 150 So. 3d 735, 2014 Miss. App. LEXIS 326 (Miss. Ct. App.), cert. denied, 150 So. 3d 708, 2014 Miss. LEXIS 564 (Miss. 2014).

RESEARCH REFERENCES

Am. Jur.

82 Am. Jur. 2d, Workers' Compensation §§ 163 et seq.

25 Am. Jur. Pl and Pr Forms (Rev), Workmen's Compensation, Forms 1 et seq.

11 Am. Jur. Proof of Facts 2d 423, De-

pendency of Child Who Has Attained Majority–Workers' Compensation.

CJS.
99 C.J.S., Workers' Compensation §§ 245-247 et seq., 598, 601 et seq.

Law Reviews.
1987 Mississippi Supreme Court Review, Workers' compensation. 57 Miss. L. J. 429, August, 1987.

Practice References.
Bender's Labor and Employment Bulletin (Matthew Bender).
Labor and Employment Law (Matthew Bender).
Larson's Workers' Compensation Desk Edition (Matthew Bender).
Larson's Workers' Compensation Law (Matthew Bender).
Mississippi Workers' Compensation Laws and Rules Annotated (Michie).

§ 71-3-27. Aliens.

Compensation under this chapter to aliens not residents (or about to become nonresidents) of the United States or Canada shall be in the same amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children or, if there be no surviving wife or child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for the period of one (1) year prior to the date of the injury, and except that the commission may, at its option or upon the application of the insurance carrier, commute all future installments of compensation to be paid to such aliens by payment of a lump sum equal to the present value of all future payments of compensation computed at four percent (4%) discount compounded annually.

HISTORY: Codes, 1942, §§ 6998-13, 6998-14; Laws, 1948, ch. 354, §§ 9, 9h; Laws, 1950, ch. 412, § 7; Laws, 1958, ch. 454, § 4; Laws, 1968, ch. 559, § 7; reenacted without change, Laws, 1982, ch. 473, § 14; reenacted without change, Laws, 1990, ch. 405, § 14, eff from and after July 1, 1990.

RESEARCH REFERENCES

ALR.
Application of workers' compensation laws to illegal aliens. 121 A.L.R.5th 523.

Am. Jur.
82 Am. Jur. 2d, Workers' Compensation § 185.

CJS.
99 C.J.S., Workers' Compensation § 283.

§ 71-3-29. Compromise, commutation, and lump sum payments.

Rules of the commission shall govern compromise payments where the prescribed schedules are not applicable and which, in its discretion, may be made in cases where it is not possible to determine the exact extent of disability, as for example in certain injuries to the back or head. The commission shall also have full authority to adjudicate the disposition of death claims. Commutation and lump sum settlement payments shall be governed by rules of the commission, and shall not be made except when determined to be in the best interest of the injured worker or his dependents, the commission having final authority in such questions.

HISTORY: Codes, 1942, §§ 6998-13, 6998-15; Laws, 1948, ch. 354, §§ 9, 9i; Laws, 1950, ch. 412, § 7; Laws, 1958, ch. 454, § 4; Laws, 1968, ch. 559, § 7; reenacted without change, Laws, 1982, ch. 473, § 15; reenacted without change, Laws, 1990, ch. 405, § 15, eff from and after July 1, 1990.

Cross References — Structured settlements, generally, see §§ 11-57-1 et seq.
Determination of wages, see § 71-3-31.

JUDICIAL DECISIONS

1. In general.

In a workmen's compensation case arising out of a compromise settlement for a lump-sum payment made by an injured worker, the trial court properly reinstated an order of the administrative judge to reopen the cause with further proceedings to determine benefits where the employee, who possessed a fourth-grade education and was unable to read or write except to sign his name, had never been informed of the full extent of his disability, had not been represented by counsel during the settlement negotiations, had not been told the full amount of disability benefits to which he was entitled, and, generally, had been taken unfair advantage of by the carrier. Bailey Lumber Co. v. Mason, 401 So. 2d 696, 1981 Miss. LEXIS 2012 (Miss. 1981).

Workmen's compensation commission order approving settlement of disputed compensation claim between employee and employer-carrier pursuant to Code 1972, § 71-3-29 and authorizing execution of any document required by employer-carrier "to evidence their release, acquittal and discharge herein," did not impliedly sanction the release of the employee's third-party rights, and the release so authorized could not validly effect any rights the employee might have against third parties. Hague v. Liberty Mut. Ins. Co., 504 F.2d 364, 1974 U.S. App. LEXIS 6014 (5th Cir. Miss. 1974).

Where a claim is doubtful, disputed, and not readily collectible, and the proposed amount of a compromise settlement is fair and reasonable, and it is for the best interest of the claimants that a settlement with commutation and a lump sum payment be accepted, such a compromise will be authorized by the court. Griffing v. Marquette Cement Mfg. Co., 253 Miss. 338, 175 So. 2d 180, 1965 Miss. LEXIS 991 (Miss. 1965).

A commuted lump-sum payment of voluntary compensation does not preclude reopening the case for a redetermination of the extent of disability. Armstrong Tire & Rubber Co. v. Franks, 242 Miss. 792, 137 So. 2d 141, 1962 Miss. LEXIS 594 (Miss. 1962).

A minor widow is not capable of contracting for a lump-sum settlement. Dapsco, Inc. v. Dependent of Upchurch, 243 Miss. 427, 138 So. 2d 287, 1962 Miss. LEXIS 359 (Miss. 1962).

Lump-sum settlement of compensation to widow set aside where widow had become ineligible to receive benefits by remarrying before payment, and had knowingly made a false statement as to necessity for lump-sum payment. Dapsco, Inc. v. Dependent of Upchurch, 243 Miss. 427, 138 So. 2d 287, 1962 Miss. LEXIS 359 (Miss. 1962).

The commission may properly refuse to set aside a compromise settlement of a claim known by claimant to be a doubtful one, one in which it was not possible to ascertain the extent of disability. Dixon v. Green, 240 Miss. 204, 127 So. 2d 662, 1961 Miss. LEXIS 450 (Miss. 1961).

RESEARCH REFERENCES

ALR.
Validity, construction, and effect of statutory exemptions of proceeds of workers' compensation awards. 48 A.L.R.5th 473.

Am. Jur.
82 Am. Jur. 2d, Workmen's Compensation § 613.
25 Am. Jur. Pl and Pr Forms (Rev), Workmen's Compensation, Forms 1 et seq.

CJS.
99 C.J.S., Workers' Compensation §§ 624 et seq.

Law Reviews.
1981 Mississippi Supreme Court Review: Administrative Law. 52 Miss. L. J. 377, June 1982.

§ 71-3-31. Determination of wages.

Except as otherwise specifically provided, the basis for compensation under this chapter shall be the average weekly wages earned by the employee at the time of the injury, such wages to be determined from the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of the injury divided by fifty-two (52); but if the injured employee lost more than seven (7) days during such period, although not in the same week, then the earnings for the remainder of such fifty-two (52) weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. When the employment prior to the injury extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, provided that results just and fair to both parties will thereby be obtained. Where, by reason of the shortness of time during which the employee has been in the employment of his employer, it is impracticable to compute the average weekly wages by the above method of computation, regard shall be had to the average weekly amount which, during the first fifty-two (52) weeks prior to the injury or death, was being earned by a person in the same grade, employed at the same or similar work in the community. Wherever allowances of any character are made to an employee in lieu of wages or specified as part of the wage contract, they shall be deemed a part of his earnings.

HISTORY: Codes, 1942, § 6998-16; Laws, 1948, ch. 354, § 10; reenacted without change, Laws, 1982, ch. 473, § 16; reenacted without change, Laws, 1990, ch. 405, § 16, eff from and after July 1, 1990.

Cross References — Determination of wages for survivors insurance for state employees, see § 25-11-5.

Determination of wages for unemployment compensation, see § 71-5-11.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Employed 52 weeks prior to injury.
3. Employed less than 52 weeks prior to injury.
4. Employees in same grade.

1. In general.

Workers' Compensation Commission erred in computing an employee's disability benefits because such wages were statutorily required to be based on "actual earnings before injury with the earning capacity after injury," the parties stipulated that the employee's average weekly wage was $645.40, which included regular overtime, such that the employee was entitled to $191.33 per week for 450 weeks rather than the $132.40 arrived at by the Commission, which failed to use the employee's overtime in calculating his pre-injury hourly wage. Nixon v. Howard Indus., 249 So. 3d 1088, 2018 Miss. App. LEXIS 298 (Miss. Ct. App. 2018).

Workers' Compensation Commission did not err in calculating a claimant's average weekly wage because Miss. Code Ann. § 71-3-31 did not literally apply given the claimant's unique work schedule while employed in the oil field industry; the claimant worked in a two-week block of time, comprised of a seven-days-on, seven-days-off, twelve-hours-a-day work schedule. Mixon v. Greywolf Drilling Co., LP, 62 So. 3d 414, 2010 Miss. App. LEXIS 671 (Miss. Ct. App. 2010).

Nothing prevented the inclusion of all wages from the same employer in determining average weekly wage for an injured employer, and whether the other position in which a claimant was not engaged at the moment of injury was one in which the claimant should be considered as being contemporaneously employed needs to be determined as a matter of fact; the combined total of the employee's wages had to reflect the earnings from the same employer for the 52-week period prior to injury and were subject to Miss. Code Ann. § 71-3-31. Piney Woods Country Life Sch. v. Young, 946 So. 2d 805, 2006 Miss. App. LEXIS 569 (Miss. Ct. App. 2006), cert. denied, 947 So. 2d 960, 2007 Miss. LEXIS 58 (Miss. 2007).

The claimant's injury as a result of a 1981 accident was not to be compensated at his average weekly wage in 1981, the time of his accident, but at his average weekly wage in 1993, the date he was declared permanently disabled where (1) he underwent two spinal surgeries to correct damage done as a result of his accident in 1981, (2) he returned to work after the first surgery and continued to work up until 1993, a period of over 11 years, (3) between the 1981 accident and the ultimate end of his employment in 1993, he received promotions and salary increases for his service to his employer, and (4) during this time, his condition gradually and progressively deteriorated to the point that in 1993 he was declared permanently disabled and unable to continue working for his employer. J. H. Moon & Sons Inc. v. Johnson, 1999 Miss. App. LEXIS 12 (Miss. Ct. App. Jan. 26, 1999), aff'd, 753 So. 2d 445, 1999 Miss. LEXIS 383 (Miss. 1999).

Where claimant suffered a single injury in 1981 and the injury gradually worsened and progressed to a permanent injury which manifested itself as a total disability in July 1993, the rate of compensation should be based on Johnson's salary and/or wages for July 1993. J. H. Moon & Sons, Inc. v. Johnson, 753 So. 2d 445, 1999 Miss. LEXIS 383 (Miss. 1999).

Worker who originally intends to return to work full time after birth of child but who only returns to work part time due to complications arising from birth should have worker's compensation benefits computed on basis of pay as part-time employee. Wilson v. Service Broadcasters, Inc. (WDAM), 483 So. 2d 1339, 1986 Miss. LEXIS 2387 (Miss. 1986).

Where there was error in determining a worker's average weekly wage, the claim would be remanded to correct the inherent error in the amount of disability compensation awarded. Singer Co. v. Smith, 362 So. 2d 590, 1978 Miss. LEXIS 2086 (Miss. 1978).

A claim for worker's compensation was not barred by the statute of limitations where it was virtually impossible for the claimant to have known at the time of the apparently minor accident, then noncompensable, that it would develop into a compensable injury; being a latent injury case, the average weekly wage was properly determined from the date of the resultant disabling injury and not from the date of the accident. Pepsi Cola Bottling Co. v. Long, 362 So. 2d 182, 1978 Miss. LEXIS 2078 (Miss. 1978).

While the basis of the claimant's weekly wage was not dogmatically stated, it was sufficient to enable the commission, in conjunction with the provisions of this section [Code 1942, § 6998-16], to justify the determination of a fair and just wage and award of benefits on that basis. White Top & Safeway Cab Co. v. Wright, 251 Miss. 830, 171 So. 2d 510, 1965 Miss. LEXIS 908 (Miss. 1965).

Where the finding of the workmen's compensation commission was favorable to claimant as to his average weekly wage, and was not manifestly wrong under conflicting evidence, the finding was sustained. Prince v. Nicholson, 229 Miss. 718, 91 So. 2d 734, 1957 Miss. LEXIS 318 (Miss. 1957).

2. Employed 52 weeks prior to injury.

In determining the average weekly wage of an employee, who had been employed on an 8-hour, 5-day-week basis, was not paid when he did not work, and during the 52 weeks immediately prior to his death had lost 66 days, the proper procedure was to divide the 66 days lost by five, the work week, which would equal 13.2 weeks lost in the 52-week period, subtract 13.2 from 52, and divide the total earning for the period by 38.8. Dependents of Harris v. Suggs, 233 Miss. 533, 102 So. 2d 696, 1958 Miss. LEXIS 413 (Miss. 1958).

3. Employed less than 52 weeks prior to injury.

Measure of preinjury earnings of workman's compensation claimant hired as temporary material handler who is injured after working only 4 days is wage rate for temporary handlers, not rate for permanent handlers where finding that, but for injury, claimant would have been promoted to permanent handler would be speculative. Hall of Mississippi, Inc. v. Green, 467 So. 2d 935, 1985 Miss. LEXIS 2031 (Miss. 1985).

For purposes of computing workmen's compensation benefits for a volunteer fireman who had suffered a 25 per cent partial disability of his whole body as a result of an injury sustained in the course of fighting a fire, his average weekly wage would be determined by dividing his total wage of $35.00 by nine, the number of weeks or parts thereof that he had worked, and not by combining his wages as a volunteer fireman with those of his regular employment nor by reference to the average weekly wages for a full-time fireman in the surrounding area. Sullivan v. Okolona, 370 So. 2d 921, 1979 Miss. LEXIS 2014 (Miss. 1979).

Where a claimant began to work 4 weeks preceding the date of injury and had worked 3 days the 1st week, 2 days during the 2nd week and 3 days during each of the next 2 weeks, and her total earnings amounted to $51.28, she should have been awarded compensation in amount of $10 per week rather than an award based on an average weekly wage of $25. Pepper v. Barrett, 225 Miss. 30, 82 So. 2d 580, 1955 Miss. LEXIS 555 (Miss. 1955).

4. Employees in same grade.

Where a claimant began work in the middle of a work week, and received his injury on the second day of the next work week, so as to be prevented from working 40 hours during the second work week, it was proper to determine claimant's compensation upon the basis of the average weekly wage of other employees in the same grade, and doing the same work, as claimant. B. C. Rogers & Sons v. Reeves, 232 Miss. 309, 98 So. 2d 875, 1957 Miss. LEXIS 477 (Miss. 1957).

RESEARCH REFERENCES

Am. Jur.
82 Am. Jur. 2d, Workers' Compensation §§ 349 et seq.

CJS.
99 C.J.S., Workmen's Compensation §§ 521-524, 542, 543 et seq.

Law Reviews.
1979 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 699.

§ 71-3-33. Guardian for minor or incompetent.

The commission may require the appointment by a court of competent jurisdiction, for any person who is mentally incompetent or a minor, of a guardian or other representative to receive compensation payable to such person under this chapter and to exercise the powers granted to or to perform the duties required of such person under this chapter.

HISTORY: Codes, 1942, § 6998-17; Laws, 1948, ch. 354, § 11; reenacted without change, Laws, 1982, ch. 473, § 17; reenacted without change, Laws, 1990, ch. 405, § 17, eff from and after July 1, 1990.

Cross References — Appointment of guardian by the court, see §§ 93-13-15 et seq.

JUDICIAL DECISIONS

1. In general.
Unless disability of minority has been removed by court decree, a guardian should be appointed to receive compensation for a minor widow. Dapsco, Inc. v. Dependent of Upchurch, 243 Miss. 427, 138 So. 2d 287, 1962 Miss. LEXIS 359 (Miss. 1962).

RESEARCH REFERENCES

Am. Jur.
82 Am. Jur. 2d, Workers' Compensation § 498.

CJS.
100 C.J.S., Workmen's Compensation §§ 814-817.

§ 71-3-35. Limitation.

(1) No claim for compensation shall be maintained unless, within thirty (30) days after the occurrence of the injury, actual notice was received by the employer or by an officer, manager, or designated representative of an employer. If no representative has been designated by posters placed in one or more conspicuous places, then notice received by any superior shall be sufficient. Absence of notice shall not bar recovery if it is found that the employer had knowledge of the injury and was not prejudiced by the employee's failure to give notice. Regardless of whether notice was received, if no payment of compensation (other than medical treatment or burial expense) is made and no application for benefits filed with the commission within two (2) years from the date of the injury or death, the right to compensation therefor shall be barred.

(2) If a person who is entitled to compensation under this chapter is mentally incompetent or a minor, the limitation for filing application for benefits shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of such guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age.

(3) Where recovery is denied to any person, in a suit brought at law or admiralty to recover damages in respect of injury or death, on the ground that such person was an employee and that the defendant was an employer within the meaning of this chapter and that such employer had secured compensation to such employee under this chapter, the limitation upon filing application for benefits shall begin to run only from the date of termination of such suit.

HISTORY: Codes, 1942, § 6998-18; Laws, 1948, ch. 354, § 12; reenacted without change, Laws, 1982, ch. 473, § 18; reenacted without change, Laws, 1990, ch. 405, § 18, eff from and after July 1, 1990.

Cross References — Effect of infancy or incompetency upon limitations of actions generally, see § 15-1-59.

Provision of medical services and supplies, see § 71-3-15.

Provision that the first installment of compensation shall become due on the fourteenth day after the employer has notice, under this section, of the injury or death, see § 71-3-37.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. When period commences.
3. Effect of knowledge of superiors and co-workers.
4. Statutory bar, generally.
5. —Medical benefits.
6. —Injury in another state.
7. —Latent injury.
8. —Death.
9. Pleading and practice.
10. Estoppel.
11. Tolling.

1. In general.

Employer's receipt-of-payment acknowledgment form, which had to be submitted daily by a worker and included a disclaimer that the worker had not sustained any work-related injuries on that day, did not violate public policy requiring a claim of a work-related injury be submitted within thirty days after the injury. Furthermore, the employer presented evidence that payment was not contingent upon the employee signing the receipt-of-payment acknowledgment form. Barnes v. LFI Fort Pierce, Inc., 238 So. 3d 7, 2018 Miss. App. LEXIS 52 (Miss. Ct. App. 2018).

Continued payment of an injured employee's salary constituted payments made in lieu of workers' compensation benefits, and these payments thus tolled the statute of limitations for workers' compensation claims, because the employee could not have continued to "earn" his wages while he was absent from work for more than sixteen weeks. Parchman v. Amwood Prods., 988 So. 2d 346, 2008 Miss. LEXIS 303 (Miss. 2008).

Where the claimant received benefits for about three weeks after her accident, the statute of limitations applied, rather than that in subsection (1) of this section. Taylor v. Salvation Army-Pascagoula Corps, 744 So. 2d 825, 1999 Miss. App. LEXIS 260 (Miss. Ct. App. 1999).

Under Mississippi law, carrier which provided workers' compensation insurance both to claimant's employer and claimant's alleged borrowing employer had no legitimate or arguable reason to initially deny benefits, and thus was liable for bad faith denial, notwithstanding its arguments that it had independent legitimate reasons, including dispute over whether each insured was claimant's employer, not to pay under either policy; such reasons were irrelevant given that statutory requirements were met such that carrier had obligation to promptly pay benefits regardless of which of its insureds was claimant's employer. Rogers v. Hartford Accident & Indem. Co., 133 F.3d 309, 1998 U.S. App. LEXIS 442 (5th Cir. Miss. 1998).

Claim decided adversely to asbestosis claimant under the Longshoremen's and Harbor Workers' Compensation Act was res judicata on claim under Mississippi Workers' Compensation, as every factual issue under the Mississippi Act, including the issue of notice to the employer, was litigated and decided adversely to claimant in the Longshoremen's Act proceedings. Ingalls Shipbuilding Div., Litton Systems, Inc. v. Parson, 495 So. 2d 461, 1986 Miss. LEXIS 2663 (Miss. 1986).

Fact that claimant for disability benefits does not report injury until 4 days after it occurs neither proves that disability must have been caused by something other than injury in course of employment nor bars claim as untimely, notwithstanding employer's policy requiring that workers report injuries immediately. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584, 1985 Miss. LEXIS 2197 (Miss. 1985).

In workman's compensation action the two-year statute of limitations § 71-3-35(1) had no application to the action, where compensation benefits were paid to the claimant. City of Kosciusko v. Graham, 419 So. 2d 1005, 1982 Miss. LEXIS 2137 (Miss. 1982).

Unless prejudice results, the failure to give actual notice within 30 days after the occurrence of the accident does not bar a claim. Davis v. Clark-Burt Roofing Co., 238 Miss. 464, 119 So. 2d 926, 1960 Miss. LEXIS 429 (Miss. 1960).

The law looks with disfavor on strained and technical interpretations of statutes regarding notice of injury, and even in cases where no timely notice was given, the tendency is to temper the literal harshness of statutory bars by the recognition of various excuses and permitting waivers and exceptions. Port Gibson Veneer & Box Co. v. Brown, 226 Miss. 127, 83 So. 2d 757, 1955 Miss. LEXIS 616 (Miss. 1955).

2. When period commences.

Employer's continued payment of an injured employee's wages although he performed little or no work constituted payment of wages in lieu of workers' compensation benefits, thereby waiving the requirement of a formal claim and tolling the statute of limitations, Miss. Code Ann. § 71-3-35(1). Ladner v. Zachry Constr., 130 So. 3d 1085, 2014 Miss. LEXIS 66 (Miss. 2014).

Workers' compensation claim was time-barred because there was substantial evidence to support the Mississippi Workers' Compensation Commission's finding that the statute of limitations began to run when an orthopedic surgeon, on referral from the claimants' primary-care physician, diagnosed the claimant with carpal tunnel syndrome as the claimant's injury then became reasonably apparent and was more clearly found to be work related. Brown v. Ill. Tool Works, Inc., 135 So. 3d 160, 2013 Miss. App. LEXIS 486 (Miss. Ct. App. 2013), cert. denied, 136 So. 3d 437, 2014 Miss. LEXIS 188 (Miss. 2014).

Employee's workers' compensation claim was barred because she was aware of the existence and appreciated the extent and nature of her injury as a result of the 1999 fall immediately post-injury; even if she did not fully recognize the nature, seriousness, and probable compensable character of her injury in 1999, she did so at the latest on May 18, 2004, when a doctor diagnosed her with a brain stem contusion. Therefore, her petition to controvert filed on August 2, 2006, was time-barred by the two-year statute of limitations. Murray v. Ingalls Shipbuilding/NGSS, 35 So. 3d 561, 2010 Miss. App. LEXIS 249 (Miss. Ct. App. 2010).

Trial court properly upheld the denial of a claim for workers' compensation benefits because the employee failed to file a workers' compensation claim within two years of being diagnosed with carpal tunnel syndrome; the employee's claim was thus barred by the two-year statute of limitations, Miss. Code Ann. § 71-3-35(1) Shipp v. Thomas & Betts & Ace Am. Ins. Co., 13 So. 3d 332, 2009 Miss. App. LEXIS 43 (Miss. Ct. App.), cert. denied, 14 So. 3d 731, 2009 Miss. LEXIS 359 (Miss. 2009).

Employee first sought treatment for allergies she alleged were related to her workplace two years after she testified that her respiratory problems had started; the appellate court noted that it was obvious that the employee suffered for years, and she was hospitalized eight times in three years, but the claim was not filed until more than three years after she knew her illnesses were related to the work place, so it was time-barred. Cooper v. Miss. Dep't of Rehab. Servs., 937 So. 2d 51, 2006 Miss. App. LEXIS 643 (Miss. Ct. App. 2006).

Two-year statute of limitations began to run in October 1995, when employee retired due to his gradually worsening hearing loss, rather than in 1998, when a specialist confirmed that his hearing had deteriorated even further. The employee had reasonably discovered the nature, seriousness, and probable compensable nature of his injury at the time of his retirement, and the record was also clear that he became aware of the cause of his hearing loss as early as 1993; his injury was not a "latent injury, and his claim filed in November 1999, was barred by the two-year limitation period set forth in Miss. Code Ann. § 71-3-35. Boykin v. Sanderson Farms, Inc., 910 So. 2d 52, 2005 Miss. App. LEXIS 51 (Miss. Ct. App. 2005).

Because there was no finding as to when an employee knew or should have known that the employee's carpal tunnel syndrome was a compensable injury, it was unclear whether the claim was barred under Miss. Code Ann. § 71-3-35; the matter was remanded for further findings of fact on this issue. Howard Indus. v. Robinson, 846 So. 2d 245, 2002 Miss. App. LEXIS 574 (Miss. Ct. App. 2002).

Worker's claim for workers' compensation benefits was barred by the two-year statute of limitation contained in Miss. Code Ann. § 71-3-35 where the worker did not lose any work as a result of the injury, did not receive either disability income benefits or nonburial death benefits, and did not file her claim for benefits within two years of the injury. Jordan v. Pace Head Start, 852 So. 2d 28, 2002 Miss. App. LEXIS 256 (Miss. Ct. App. 2002).

Substantial evidence supported the commission's determination that the claimant invoked her right to disability benefits within two years after she discovered or reasonably should have discovered the work related nature of her carpal tunnel syndrome. Lucas v. Angelica Uniform Group, 733 So. 2d 285, 1998 Miss. App. LEXIS 810 (Miss. Ct. App. 1998).

The Workers' Compensation statute of limitations begins to run when the claimant is or reasonably should be aware of having sustained a compensable injury, but the statute is deemed not to have begun to run if the claimant's reasonably diligent efforts to obtain treatment yield no medical confirmation of a compensable injury. Thus, the statute of limitations could not be invoked by an employer, even though the claimant did not file a motion to controvert until over 2 years after the accident, where the claimant clearly knew that he had been injured in an accident, but he did not discover the compensable nature of his injuries until over a year after the accident because his physicians remained unaware of the compensable nature of his injuries until that time. Georgia Pacific Corp. v. Taplin, 586 So. 2d 823, 1991 Miss. LEXIS 664 (Miss. 1991).

The two-year statute of limitations on an employee's claim for workmen's compensation benefits began to run when he left his employment on a four-month sick leave in 1973, where he knew or should have known the nature, seriousness and disabling character of hypertension, from which he had suffered for several years, and where his testimony established that he had actual knowledge of his disability and that it had been caused by a work-connected aggravation of hypertension. Quaker Oats Co. v. Miller, 370 So. 2d 1363, 1979 Miss. LEXIS 2049 (Miss. 1979).

Mental competency vel non determines the running or tolling or the worker's compensation statute. Shippers Express v. Chapman, 364 So. 2d 1097, 1978 Miss. LEXIS 2235 (Miss. 1978).

A defendant who has successfully defended an action for personal injuries resulting from a beating the plaintiff received from defendant's foreman, on the ground that the relationship of employer-employee existed between defendant and plaintiff, cannot thereafter challenge the applicability of the Workmen's Compensation Law to the plaintiff's claim; provided claim for benefits is timely filed within the time extended by Code 1942, § 6998-18(c) beginning with the date of the order dismissing plaintiff's appeal. Seal v. Industrial Electric, Inc., 395 F.2d 214, 1968 U.S. App. LEXIS 6987 (5th Cir. Miss. 1968).

Notice is not required until there is a disability where the injury is progressive and cannot with reasonable certainty be recognized at first as compensable. Pope Co. v. Wells, 230 Miss. 199, 92 So. 2d 370, 1957 Miss. LEXIS 359 (Miss. 1957).

Where a claimant on October 15, 1954, who, while in the course and scope of his employment, became exposed to cement dust, which aggravated an existing chronic eczema, continued his employment until March 14, 1955, when he was found to be totally disabled, and then immediately gave notice to his employer, the employer was not prejudiced by the failure of the claimant to give an earlier notice. Pope Co. v. Wells, 230 Miss. 199, 92 So. 2d 370, 1957 Miss. LEXIS 359 (Miss. 1957).

3. Effect of knowledge of superiors and co-workers.

Under Mississippi law, when employer has knowledge of workers' compensation claimant's injury, formal notice to employer of occurrence of injury is not needed to trigger carrier's obligation to provide benefits, and this knowledge is imputed to carrier without any formal notification to carrier. Rogers v. Hartford Accident & Indem. Co., 133 F.3d 309, 1998 U.S. App. LEXIS 442 (5th Cir. Miss. 1998).

Where the employer had knowledge of an employee's bulge or herniated disc, although not necessarily knowledge that the injury was work connected, and the employer did not show that it was prejudiced by the employee's failure to notify the employer, the employer had adequate notice. Central Electric & Machinery Co. v. Shelton, 220 So. 2d 320, 1969 Miss. LEXIS 1454 (Miss. 1969).

Where employers' foreman knew of the claimant's injury on the day that it occurred, there was no evidence that the employer was prejudiced by the late filing of the claim, and the commission found that neither the employee nor his wife knew that his injury was compensable until they consulted an attorney, there was no error in awarding compensation. Walker Mfg. Co. v. Pickens, 206 So. 2d 639, 1968 Miss. LEXIS 1583 (Miss. 1968).

In view of the fact that the claim was filed with the commission within about two months after the date of injury and the evidence supported a finding that, although the claimant did not inform his foreman as to the circumstances attendant upon it, he had given notice to the foreman within several days after the occurrence of his injury, the commission was warranted in concluding that no prejudice had resulted and that an award should be made. Davis v. Clark-Burt Roofing Co., 238 Miss. 464, 119 So. 2d 926, 1960 Miss. LEXIS 429 (Miss. 1960).

Knowledge of accident by superintendent of part of mill in which injured employee worked is sufficient notice to the employer, where no representative has been designated by the employer to whom notice of injury should be given. Teague v. Graning Hardwood Mfg. Co., 238 Miss. 48, 117 So. 2d 342, 1960 Miss. LEXIS 375 (Miss. 1960).

Failure to notify employer of injury does not preclude compensation where employer knew of accident a few minutes after it happened and conducted an investigation. Bush v. Dependents of Byrd, 234 Miss. 782, 108 So. 2d 211, 1959 Miss. LEXIS 555 (Miss. 1959).

Where a record showed that the claimant had notified one of his superiors of his injury, the employer's contention that the claimant had failed to give notice of his injury as required by this section [Code 1942, § 6998-18] was rejected. Houston Contracting Co. v. Reed, 231 Miss. 213, 95 So. 2d 231, 1957 Miss. LEXIS 507 (Miss. 1957).

Where the claimant, who on September 28th, 1953, sustained injury arising out of the course of her employment, had notified the floor supervisor of her injury, but received no disability payments, the claimant being ignorant of the fact she was entitled thereto, a claim for compensation filed on September 21, 1955, was timely. Pascagoula Crab Co. v. Holbrooks, 230 Miss. 833, 94 So. 2d 233, 1957 Miss. LEXIS 429 (Miss. 1957).

Where it was undisputed that within a few days after both heart attacks suffered by the claimant he was visited in the hospital by his coworkers, including his foreman, and further that he was treated in the first aid station maintained by the employer for the benefit of injured employees and was transported by the employer's ambulance to the hospital and from the hospital home, the employer had knowledge of the claimant's injury and of the fact that it was suffered in the course of his employment and related to his work, and was not prejudiced by the claimant's failure to give notice. Ingalls Shipbuilding Corp. v. Dickerson, 230 Miss. 110, 92 So. 2d 354, 1957 Miss. LEXIS 350 (Miss. 1957).

The fact that there was an existence of a close personal and family relationship between the injured employee and his foreman was not in itself a sufficient circumstance to render nugatory notice received by such foreman. Port Gibson Veneer & Box Co. v. Brown, 226 Miss. 127, 83 So. 2d 757, 1955 Miss. LEXIS 616 (Miss. 1955).

Under this section [Code 1942, § 6998-18] notice to any superior of employee is sufficient notice. Port Gibson Veneer & Box Co. v. Brown, 226 Miss. 127, 83 So. 2d 757, 1955 Miss. LEXIS 616 (Miss. 1955).

Where an employee suffered a heart attack while at work and his foreman drove him to a hospital, and there was no showing whatsoever that the employer was prejudiced by failure of a claimant to give notice in the manner contemplated by the statute, the employer cannot complain that he had received no actual notice of the claim nor could the employer argue that the claim was barred by this section [Code 1942, § 6998-18]. Pearl River Tung Co. v. Estate of John, 225 Miss. 303, 83 So. 2d 95, 1955 Miss. LEXIS 584 (Miss. 1955).

4. Statutory bar, generally.

Because the claimants did not apply for workers' compensation benefits within two years of their injuries, their claims were time-barred by the statute of limitations, in that the statute of limitations was not tolled and the employer was not estopped from asserting the statute of limitations as a defense. McInturff v. Yellow Ry. Corp., — So. 3d —, 2019 Miss. App. LEXIS 169 (Miss. Ct. App. Apr. 23, 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 467 (Miss. 2019), cert. denied, 283 So. 3d 733, 2019 Miss. LEXIS 427 (Miss. 2019).

Regardless of the date chosen, the claimant failed to submit her carpal-tunnel and ulnar-neuropathy claims within the two-year statute of limitations set forth in Miss. Code Ann. § 71-3-35, barring these claims and any claims arising directly out of them, including herregional-pain-syndrome claim. Further, the claimant was aware of work-related depression over two-years before she filed her claim for depression. Johnson v. City of Jackson, 211 So. 3d 767, 2016 Miss. App. LEXIS 447 (Miss. Ct. App. 2016).

Substantial evidence supported the Commission's finding that an employee's claim was barred by the two-year statute of limitations contained in the Worker's Compensation Act, Miss. Code Ann. § 71-3-35(1) and that the employee's salary failed to constitute wages in lieu of compensation; because nothing in the record showed that the employee's physicians restricted him from working, and the employer insisted that it did not pay the employee his wages in recognition of a compensable disability, but rather in return for work he performed. Ladner v. Zachry Constr. & Zurich Am. Ins. Co., 130 So. 3d 1121, 2013 Miss. App. LEXIS 257 (Miss. Ct. App. 2013).

Firefighter's claim for workers' compensation benefits was not barred by the two-year statute of limitations period because he was not reasonably aware of the compensable nature of his latent asbestos-related respiratory disease at any time prior to the year he in which he filed his claim. City of Jackson v. Sandifer, 125 So. 3d 681, 2013 Miss. App. LEXIS 703 (Miss. Ct. App. 2013).

Two-year statute of limitations will not begin to run until by reasonable care and diligence it is discoverable and apparent that a compensable injury has been sustained; the statute is not deemed to have begun running if the claimant's reasonably diligent efforts to obtain treatment yield no medical confirmation of compensable injury. Mississippi law does not penalize workers when they, with their physicians' assistance, cannot confirm that their injuries are compensable. Miss. State Univ. v. Panuska, 20 So. 3d 717, 2009 Miss. App. LEXIS 188 (Miss. Ct. App. 2009).

Claimant's application for workers' compensation benefits was properly dismissed as untimely under Miss. Code Ann. § 71-3-35(1) because there was no evidence that the employer paid the claimant wages in lieu of benefits to toll the two-year limitations period and there was no evidence that the employer thought that the claimant had a work-related injury. Bynum v. Anderson Tully Lumber Co., 996 So. 2d 814, 2008 Miss. App. LEXIS 702 (Miss. Ct. App. 2008).

Claimant's petition to controvert, which was filed in June 2005 for an August 1994 work-related injury to his hips, was time-barred under the two-year statute of limitations, Miss. Code Ann. § 71-3-35(1), because the injury was not latent and because the claimant reasonably should have known that he had a compensable injury from the diagnosis of avascular necrosis in 1996. James v. Bowater Newsprint & Travelers Ins. Co., 983 So. 2d 355, 2008 Miss. App. LEXIS 326 (Miss. Ct. App. 2008).

Where an employer voluntarily paid for an employee's work-related medical expenses for two years, the two-year statute of limitations barred the employee's petition to controvert because the employee failed to show that the statute of limitations was tolled based on arguments regarding the employer's voluntary payment of medical benefits, wages in lieu of compensation, a latent or progressive injury, and equitable estoppel. Baker v. IGA Super Valu Food Store, 990 So. 2d 254, 2008 Miss. App. LEXIS 246 (Miss. Ct. App.), cert. denied, 994 So. 2d 186, 2008 Miss. LEXIS 458 (Miss. 2008).

Dismissal of the employee's petition to controvert was proper under Miss. Code Ann. § 71-3-35 because the claim was barred by the statute of limitations since the employee received no benefits of any kind within the two-year period following his injury; he chose to use his wife's medical insurance to pay for his treatment. Parchman v. Amwood Prods., Inc., 988 So. 2d 380, 2007 Miss. App. LEXIS 31 (Miss. Ct. App. 2007).

Record supported the Mississippi Workers' Compensation Commission's finding that an employee had filed her claim for workers' compensation benefits more than two years after she became aware that she was allergic to tobacco smoke and had experienced adverse effects from exposure to tobacco smoke in the workplace; the appellate court reversed the second trial court's order overturning the Commission's decision denying the employee's claim for benefits. Univ. of S. Miss. v. Gillis, 872 So. 2d 60, 2003 Miss. App. LEXIS 1193 (Miss. Ct. App. 2003), cert. denied, 873 So. 2d 1032, 2004 Miss. LEXIS 479 (Miss. 2004).

Differences in the numbers on the two B-31 Forms were mere corrections of the amount actually paid, and no additional benefits were furnished to the claimant after his settlement; the filing of a B-31 Form containing errors as to the amount of the benefits paid was sufficient to begin the running of the statute of limitations and the filing of a corrected form did not interrupt the limitations period, even if it was without notice to the claimant. McCrimon v. Red Arrow Car Wash, 859 So. 2d 395, 2003 Miss. App. LEXIS 908 (Miss. Ct. App. 2003).

The defendant city would not be equitably estopped from asserting the two-year time bar on the basis that city officials allegedly represented to the claimant that the city would file his claim with the Workers' Compensation Commission on his behalf; reliance on such a statement to sink into inactivity for a period of two years could not be deemed reasonable or justifiable. McCrary v. City of Biloxi, 1999 Miss. App. LEXIS 155 (Miss. Ct. App. Apr. 6, 1999).

Employer was estopped from claiming that two-year statute of limitations on workers' compensation claim was not tolled, where employer failed to timely file statutorily-required notice of fatal termination of injury. Holbrook by & Through Holbrook v. Albright Mobile Homes, 703 So. 2d 842, 1997 Miss. LEXIS 636 (Miss. 1997).

Issues of material fact existed as to whether employer had workers' compensation coverage, whether employer misled employee's survivors into believing no coverage existed, and whether survivors relied on any misleading statements, precluding summary judgment as to whether statute of limitations on workers' compensation claim should be tolled based on alleged misrepresentations by employer. Holbrook by & Through Holbrook v. Albright Mobile Homes, 703 So. 2d 842, 1997 Miss. LEXIS 636 (Miss. 1997).

Even if an employer had misrepresented to a claimant that he had no insurance, the employer and its insurance carrier would not be estopped from pleading the 2-year statute of limitations where the evidence established that the claimant was aware of the falsity of that representation and did not rely on it, and was aware of her rights before the expiration of the limitation period. Layton v. State, 246 So. 2d 534, 1971 Miss. LEXIS 1409 (Miss. 1971).

The fact that a claimant did not process his claim, if he had one, does not suspend the running of the two-year statute of limitations. Taylor v. Crosby Forest Products Co., 198 So. 2d 809, 1967 Miss. LEXIS 1271 (Miss. 1967).

Where there was positive evidence from the only heart specialist who had treated claimant over a 4-year period that he might have been disabled without any work activity at all, and the only episode in the record which could indicate that claimant sustained a work-connected injury occurred more than 2 years prior to the date on which he filed a claim, compensation was properly denied. Knox Glass, Inc. v. Evans, 197 So. 2d 784, 1967 Miss. LEXIS 1534 (Miss. 1967).

Where there is substantial evidence to support the finding that the claimant's injury occurred more than two years prior to the date on which claim for compensation was filed, and the evidence that the employer knew of the claimant's condition is vague and inconclusive, the claim is properly barred by limitations. Childs v. Mississippi Industries for Blind, 184 So. 2d 872, 1966 Miss. LEXIS 1494 (Miss. 1966), overruled, Tabor Motor Co. v. Garrard, 233 So. 2d 811, 1970 Miss. LEXIS 1682 (Miss. 1970).

Where claimant, injured on Jan. 15, 1960, signed final settlement report filed on Feb. 18, 1960, and filed claim for same injury on Mar. 20, 1961, and subsequently on Oct. 31, 1962 amended his claim to include injuries occurring on May 1, 1960, question of whether amendment related back to date of filing original claim so as to take it out of 1-year and 2-year limitations periods depended upon whether later injury was a new injury or further disability for previous injury, and this was a question of fact to be determined by commission. Yazoo Mfg. Co. v. Schaffer, 254 Miss. 35, 179 So. 2d 784, 1965 Miss. LEXIS 921 (Miss. 1965).

Claimant was not entitled to compensation where his claim therefor was filed more than two years from the date of injury, and medical testimony supported the finding of the workmen's compensation commission that the employee's work activities had not contributed to his condition. Modern Laundry v. Harrell, 246 Miss. 463, 150 So. 2d 409, 1963 Miss. LEXIS 465 (Miss. 1963), overruled, Tabor Motor Co. v. Garrard, 233 So. 2d 811, 1970 Miss. LEXIS 1682 (Miss. 1970).

The right to compensation was barred where the claimant failed to file for benefits until more than two years from the date of injury. Modern Laundry v. Harrell, 246 Miss. 463, 150 So. 2d 409, 1963 Miss. LEXIS 465 (Miss. 1963), overruled, Tabor Motor Co. v. Garrard, 233 So. 2d 811, 1970 Miss. LEXIS 1682 (Miss. 1970).

It is immaterial that a claim for compensation was not filed until after settlement of a suit against a third party tortfeasor, if the application was made within two years of injury. Bush v. Dependents of Byrd, 234 Miss. 782, 108 So. 2d 211, 1959 Miss. LEXIS 555 (Miss. 1959).

5. —Medical benefits.

The two-year statute of limitations in Miss. Code Ann. § 71-3-35(1) expressly excepts medical expenses; it is possible, under the statute, for an employer to dispute compensability yet provide medical treatment without waiving the statute of limitations. Lindsay Logging, Inc. v. Watson, 44 So. 3d 388, 2010 Miss. App. LEXIS 120 (Miss. Ct. App.), cert. denied, 49 So. 3d 106, 2010 Miss. LEXIS 495 (Miss. 2010).

Miss. Code Ann. § 71-3-35(1) expressly excludes medical benefits from payments of compensation that could toll the statute. Baker v. IGA Super Valu Food Store, 990 So. 2d 254, 2008 Miss. App. LEXIS 246 (Miss. Ct. App.), cert. denied, 994 So. 2d 186, 2008 Miss. LEXIS 458 (Miss. 2008).

In light of the language "other than medical treatment" in § 71-3-35(1), medical payments are within the meaning of "payment or compensation" unless specifically excepted therefrom. Barr v. Conoco Chemicals, Inc., 412 So. 2d 1193, 1982 Miss. LEXIS 1926 (Miss. 1982).

A claim for workman's compensation medical benefits was barred by this section where the claim was filed more than 2 years after the injury and where the claimant did not receive compensation other than medical treatment within the 2 year period. Speed Mechanical, Inc. v. Taylor, 342 So. 2d 317, 1977 Miss. LEXIS 2310 (Miss. 1977).

In a workmen's compensation case, the furnishing of medical services and supplies is the payment of compensation for the purpose of tolling any statute of limitations which might apply. Cox v. International Harvester Co., 221 So. 2d 924, 1969 Miss. LEXIS 1509 (Miss. 1969).

Payment of medical expenses is payment of compensation tolling the statute of limitations. Graeber Bros., Inc. v. Taylor, 237 Miss. 691, 115 So. 2d 735, 1960 Miss. LEXIS 502 (Miss. 1960).

The Workmen's Compensation Law evidences the legislative intent to put the same period of limitations on the payment of medical benefits as has been put on the payment of compensation. Trehern v. Grafe Auto Co., 232 Miss. 854, 100 So. 2d 786, 1958 Miss. LEXIS 339 (Miss. 1958).

Where a claimant had been paid some medical compensation benefits, and, together with the carrier, had executed a form under which the claim was closed, a claim for additional medical benefits filed nearly four years later was barred by the statute of limitations. Trehern v. Grafe Auto Co., 232 Miss. 854, 100 So. 2d 786, 1958 Miss. LEXIS 339 (Miss. 1958).

6. —Injury in another state.

The limitation period for claiming compensation under Mississippi law is tolled while the employee, injured while temporarily working in another state for his Mississippi employer, was receiving compensation under the law of that state. Martin v. L. & A. Contracting Co., 249 Miss. 441, 162 So. 2d 870, 1964 Miss. LEXIS 405 (Miss. 1964).

An employer is estopped from relying on the limitation period for the filing of a claim by his voluntary payment of compensation under the law of the state in which injury occurred, in which benefits were substantially less. Martin v. L. & A. Contracting Co., 249 Miss. 441, 162 So. 2d 870, 1964 Miss. LEXIS 405 (Miss. 1964).

7. —Latent injury.

Motion to dismiss an employee's petition to controvert with the Mississippi Workers' Compensation Commission was properly denied because the statute of limitations, Miss. Code Ann. § 71-3-35(1), for the employee's labyrinthine concussion began to run at the time it was diagnosed on September 6, 2000; therefore, the employee acted within the two-year limit by filing the petition to controvert on February 7, 2002. Miss. State Univ. v. Panuska, 20 So. 3d 717, 2009 Miss. App. LEXIS 188 (Miss. Ct. App. 2009).

A claim for worker's compensation was not barred by the statute of limitations where it was virtually impossible for the claimant to have known at the time of the apparently minor accident, then noncompensable, that it would develop into a compensable injury; being a latent injury case, the average weekly wage was properly determined from the date of the resultant disabling injury and not from the date of the accident. Pepsi Cola Bottling Co. v. Long, 362 So. 2d 182, 1978 Miss. LEXIS 2078 (Miss. 1978).

Where claimant knew or had reason to believe that she had sustained a spider bite, but there was nothing in the record to indicate that she, as a reasonable person, should have recognized the nature, seriousness, and probable compensable character of the injury, the statute of limitations did not begin to run until by reasonable care and diligence it was discoverable and apparent that a compensable injury had been sustained. Struthers Wells--Gulfport, Inc. v. Bradford, 304 So. 2d 645, 1974 Miss. LEXIS 1465 (Miss. 1974).

Where latent injuries are involved, the time for filing a compensation claim under the two-year statute commences to run when it becomes reasonably discoverable that the claimant has sustained a compensable injury and disability, or, in other words, the claim period runs from the time a compensable injury becomes reasonably apparent. Tabor Motor Co. v. Garrard, 233 So. 2d 811, 1970 Miss. LEXIS 1682 (Miss. 1970).

Where a garage foreman was burned by a supposed hot welding spark falling into his ear, and none of the several doctors who treated him discovered that the source of his dizziness and other physical problems which followed the injury was a piece of slag which had become embedded in the middle ear, a workmen's compensation claim filed within two years after the relationship between the disability and the apparently minor accident became known was timely, even though the claim was filed more than two years after the accident. Tabor Motor Co. v. Garrard, 233 So. 2d 811, 1970 Miss. LEXIS 1682 (Miss. 1970).

That claimant did not definitely ascertain the exact result of his injury until after the expiration of two years does not prevent the running of the two-year statute of limitations. Thyer Mfg. Co. v. Keys, 235 Miss. 229, 108 So. 2d 876, 1959 Miss. LEXIS 420 (Miss. 1959), overruled, Tabor Motor Co. v. Garrard, 233 So. 2d 811, 1970 Miss. LEXIS 1682 (Miss. 1970).

8. —Death.

The administrator of a deceased workman's estate was not an "other representative" within the meaning of the statute providing that limitations would begin to run against minor claimants at the time they acquired a guardian or other authorized representative, since the claims of death beneficiaries are not assets of the estate of a deceased employee, and the guardian or other representative contemplated by the statute must be a fiduciary who not only has the power but the duty to prosecute the minor's claim for compensation benefits. United States Fidelity & Guaranty Co. v. Fortner, 234 So. 2d 636, 1970 Miss. LEXIS 1419 (Miss. 1970).

The fact that an employee filed no claim for injury within the two-year limitation period established by this section [Code 1942, § 6998-18] will not operate to bar a claim filed by his dependents within two years after the date of his death. Ingalls Shipbuilding Corp. v. Dependents of Harris, 187 So. 2d 886, 1966 Miss. LEXIS 1371 (Miss. 1966).

In the absence of a hearing and order which would have the effect of deciding an employee's claim on its merits during his lifetime, thereby constituting res judicata as to all parties in interest, the two-year statute against the claim of his dependents begins to run from the date of his death, and not from the date of the injury. Ingalls Shipbuilding Corp. v. Dependents of Harris, 187 So. 2d 886, 1966 Miss. LEXIS 1371 (Miss. 1966).

9. Pleading and practice.

Award of disability benefits to the employee was improper because the employee's claim was barred by the two-year statute of limitations set forth in Miss. Code Ann. § 71-3-35(1); it was possible for the employer to dispute compensability yet provide medical treatment without waiving the statute of limitations. Even if it could have been inferred that the employer's intent behind payments to the employee was in lieu of compensation, those four days did not satisfy the five-day waiting period that was required in Miss. Code Ann. § 71-3-11. Lindsay Logging, Inc. v. Watson, 44 So. 3d 388, 2010 Miss. App. LEXIS 120 (Miss. Ct. App.), cert. denied, 49 So. 3d 106, 2010 Miss. LEXIS 495 (Miss. 2010).

Award of permanent total disability benefits to the employee for 450 weeks was proper in part because, even if the employee failed to notify her employer directly within 30 days as required pursuant to Miss. Code Ann. § 71-3-35(1), she was not barred from recovery since the employer had sufficient notice of the injury and was not prejudiced. Adolphe Lafont USA, Inc. v. Ayers, 958 So. 2d 833, 2007 Miss. App. LEXIS 417 (Miss. Ct. App. 2007).

Trial court did not err in finding the reinstatement of an employee's workers' compensation claim to be time barred under the one-year time period in Miss. Code Ann. § 71-3-53 and the two-year period in Miss. Code Ann. § 71-3-35, where even using the employee's calculation, the two-year deadline would have expired before she filed her motion for reinstatement. Edwards v. Wal-Mart, 930 So. 2d 1273, 2006 Miss. App. LEXIS 271 (Miss. Ct. App. 2006).

Failure to plead the bar of limitations before the attorney-referee does not preclude the employer from doing so in the first pleading required to be addressed to the commission. Thyer Mfg. Co. v. Keys, 235 Miss. 229, 108 So. 2d 876, 1959 Miss. LEXIS 420 (Miss. 1959), overruled, Tabor Motor Co. v. Garrard, 233 So. 2d 811, 1970 Miss. LEXIS 1682 (Miss. 1970).

10. Estoppel.

Because the claimants did not apply for workers' compensation benefits within two years of their injuries, their claims were time-barred by the statute of limitations. Moreover, the employer was not estopped from asserting the statute of limitations as a defense in that the employer did not misrepresent the claimants' rights to benefits, or fail to timely file notice of the claimants' injury under the reporting statute. McInturff v. Yellow Ry. Corp., — So. 3d —, 2019 Miss. App. LEXIS 169 (Miss. Ct. App. Apr. 23, 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 467 (Miss. 2019), cert. denied, 283 So. 3d 733, 2019 Miss. LEXIS 427 (Miss. 2019).

Employer and an insurance carrier did not waive the statute of limitations because of their failure immediately to pursue a hearing on the defense and their substantial participation in discovery and litigation for three years, nor did the doctrine of equitable estoppel apply to the case because the claimant was never misled by the employer about workers' compensation benefits Brown v. Ill. Tool Works, Inc., 135 So. 3d 160, 2013 Miss. App. LEXIS 486 (Miss. Ct. App. 2013), cert. denied, 136 So. 3d 437, 2014 Miss. LEXIS 188 (Miss. 2014).

Employee was estopped from asserting the statute of limitations, Miss. Code Ann. § 71-3-35(1), as a defense because the employer failed to comply with the notice requirements of Miss. Code Ann. § 71-3-67(1), and the employee testified that he did not file a claim for workers' compensation because he was under the impression that the employer had filed it for him. Prentice v. Schindler Elevator Co., 13 So. 3d 1258, 2009 Miss. LEXIS 288 (Miss. 2009).

The employer was estopped from asserting the statute of limitation as a bar to a claim for benefits where the administrative judge on contested evidence found an affirmative misrepresentation by the employer intended to mislead the claimant into not filing for benefits Brock v. Hankins Lumber Co., 786 So. 2d 1064, 2000 Miss. App. LEXIS 575 (Miss. Ct. App. 2000).

Although the claimant admitted that he did not file his petition to controvert within the two year time limitation set forth in subsection (1), the employer city was estopped from asserting the statute of limitations where the city failed to file the statutorily required notice of controversy, told the claimant that it would file his claim, and engaged in settlement negotiations for a significant period of time. McCrary v. City of Biloxi, 757 So. 2d 978, 2000 Miss. LEXIS 29 (Miss. 2000).

11. Tolling.

Because the claimants did not apply for workers' compensation benefits within two years of their injuries, their claims were time-barred by the statute of limitations. Moreover, the statute of limitations was not tolled because the sick and vacation pay which the claimants received were not wages in lieu of compensation. McInturff v. Yellow Ry. Corp., — So. 3d —, 2019 Miss. App. LEXIS 169 (Miss. Ct. App. Apr. 23, 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 467 (Miss. 2019), cert. denied, 283 So. 3d 733, 2019 Miss. LEXIS 427 (Miss. 2019).

Claimant's untimely filed workers' compensation claim was not saved by her employer's filing of a Form B-52 Notice of Controversion; a Form B-52 was not an application for benefits, and therefore, contrary to the claimant's assertion, it did not toll the statute of limitations. McKinney v. Univ. of Mississippi Med. Ctr., 110 So. 3d 332, 2013 Miss. App. LEXIS 80 (Miss. Ct. App. 2013).

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1979 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 699.

Bradley, Time limitations which bar claims in Mississippi workers' compensation: a re-examination. 62 Miss. L. J. 511.

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§ 71-3-37. Payment of compensation.

(1) Compensation under this chapter shall be paid periodically, promptly, in the usual manner, and directly to the person entitled thereto, without an award except where liability to pay compensation is controverted by the employer.

(2) The first installment of compensation shall become due on the fourteenth (14th) day after the employer has notice, as provided in Section 71-3-35, of the injury or death, on which date all compensation then due shall be paid. Thereafter, compensation shall be paid in installments, every fourteen (14) days, except where the commission determines that payment in installments should be made at some other period.

(3) Upon making the first payment and upon suspension of payment for any cause, the employer shall immediately notify the commission in accordance with a form prescribed by the commission that payment of compensation has begun or has been suspended, as the case may be. No suspension in payments of compensation shall be made for refusing to submit to medical or surgical treatment until the reasonableness of such request or refusal has been determined by the commission, and a written order suspending payment issued.

(4) If the employer controverts the right to compensation he shall file with the commission, on or before the fourteenth (14th) day after he has knowledge of the alleged injury or death, a notice in accordance with a form prescribed by the commission, stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury

or death, and the grounds upon which the right to compensation is controverted. Failure to file this notice shall not prevent the employer raising any defense where claim is subsequently filed by the employee, nor shall the filing of the notice preclude the employer raising any additional defense.

(5) If any installment of compensation payable without an award is not paid within fourteen (14) days after it becomes due, as provided in subsection (2) of this section, there shall be added to such unpaid installment an amount equal to ten percent (10%) thereof, which shall be paid at the same time as, but in addition to, such installment unless notice is filed under subsection (4) of this section, or unless such nonpayment is excused by the commission after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(6) If any installment payable under the terms of an award is not paid within fourteen (14) days after it becomes due, there shall be added to such unpaid installment an amount equal to twenty percent (20%) thereof, which shall be paid at the same time as, but in addition to, such compensation unless review of the compensation order making such award is had.

(7) Within thirty (30) days after the final payment of compensation has been made, the employer shall send to the commission a notice in accordance with a form prescribed by the commission, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer fails so to notify the commission within such time, the commission may assess against such employer a civil penalty in an amount not exceeding One Hundred Dollars ($100.00). No case shall be closed nor any penalty be assessed without notice to all parties interested and without giving to all such parties an opportunity to be heard.

(8) The commission (a) may upon its own initiative at any time in a case in which payments are being made without an award, and (b) shall in any case where right to compensation is controverted or where payments of compensation have been stopped or suspended, upon receipt of notice from any person entitled to compensation or from the employer that the right to compensation is controverted or that payments of compensation have been stopped or suspended, make such investigations, cause such medical examinations to be made, hold such hearings, and take such further action as it considers will properly protect the rights of all parties.

(9) Whenever the commission deems it advisable, it may require any self-insurer to make a deposit with the State Treasurer to secure prompt and convenient payment of such compensation; and payments therefrom upon any awards shall be made upon order of the commission.

(10) Whenever the commission determines that it is for the best interests of a person entitled to compensation, the liability of the employer for compensation, or any part thereof as determined by the commission, may be discharged by the payment of a lump sum equal to the present value of future

compensation payments commuted, computed at four percent (4%) true discount compounded annually. The probability of the death of the injured employee or other person entitled to compensation shall be determined in accordance with validated actuarial tables or factors as the commission finds equitable and consistent with the purposes of the Workers' Compensation Law, and the probability of the remarriage of the surviving spouse or other person entitled to compensation may be determined in accordance with rules adopted by the commission which shall apply validated actuarial tables or factors as the commission finds equitable and consistent with the purposes of the Workers' Compensation Law. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded. The commission shall be the sole judge as to whether or not a lump-sum payment shall be to the best interest of the injured worker or his dependents.

(11) If the employer has made advance payments of compensation, he shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due.

(12) An injured employee or, in case of death, his dependents or personal representative shall give receipts for payment of compensation to the employer paying the same; and whenever required, such employer shall produce the same for inspection by the commission.

(13) Whenever a dispute arises between two (2) or more parties as to which party is liable for the payment of workers' compensation benefits to an injured employee and there is no genuine issue of material fact as to the employee's employment, his average weekly wage, the occurrence of an injury, the extent of the injury, and the fact that the injury arose out of and in the course of the employment, the commission may require the disputing parties involved to pay benefits immediately to the employee and to share equally in the payment of those benefits until it is determined which party is solely liable, at which time the liable party must reimburse all other parties for the benefits they have paid to the employee with interest at the legal rate.

HISTORY: Codes, 1942, § 6998-19; Laws, 1948, ch. 354, § 13; Laws, 1950, ch. 412, § 8; reenacted without change, Laws, 1982, ch. 473, § 19; Laws, 1987, ch. 361, § 4; reenacted without change, Laws, 1990, ch. 405, § 19; Laws, 1992, ch. 577, § 4; Laws, 2007, ch. 349, § 1, eff from and after passage (approved Mar. 15, 2007).

Cross References — Structured settlements, generally, see §§ 11-57-1 et seq.

Establishment of a special worker's compensation account for payment of compensation, see § 71-3-38.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Employee's refusal to submit to medical or surgical treatment.
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1. In general.

Where an employee asserted an action against a worker's compensation insurer because of the insurer's intentional bad-faith refusal to pay worker's compensation when due, Mississippi law applied because, inter alia, an insurer's intentional bad-faith refusal to pay worker's compensation timely is an independent tort committed by the insurer outside of the scope of the worker's employment and it is legally distinct from and independent of any claims arising under the Mississippi Workers' Compensation Act, and Mississippi had the most significant relationship to the intentional tort suit. Williams v. Liberty Mut. Ins. Co., 741 F.3d 617, 2014 U.S. App. LEXIS 1726 (5th Cir. Miss. 2014).

Employer was a contractor, not a subcontractor, of the three timber owners, as neither of the three companies had already contracted for the performance of the work done by the employer; neither company was the employee's statutory employer under Miss. Code Ann. § 71-3-7 and had no statutory responsibility to insure the employee; assuming the Mississippi Workers' Compensation Commission (Commission) was empowered under Miss. Code Ann. § 71-3-37(13) to determine whether another company was contractually bound, the Commission was entitled to accept the testimony that the company never agreed to provide workers' compensation coverage for the employer, but instead, required the employer to have its own workers' compensation insurance. Miss. Loggers Self Insured Fund, Inc. v. Andy Kaiser Logging, 992 So. 2d 649, 2008 Miss. App. LEXIS 286 (Miss. Ct. App.), cert. denied, 997 So. 2d 924, 2008 Miss. LEXIS 537 (Miss. 2008).

In a case for contribution, a fire department correctly argued that the case to apportion the responsibility for workers' compensation benefits should have been brought, if at all, before the Mississippi Workers' Compensation Commission pursuant to Miss. Code Ann. § 71-3-37(13). Travelers Prop. & Cas. Co. v. City of Greenwood Fire Dep't, 441 F. Supp. 2d 776, 2006 U.S. Dist. LEXIS 53914 (N.D. Miss. 2006).

Employee's workers' compensation claim for injuries in 1992 and 1995 was barred as the employee had filed a B-31 form shortly after each injury that allowed the employer to close the claim one year after the form had been filed. Hancock v. Miss. Forestry Comm'n, 878 So. 2d 1058, 2004 Miss. App. LEXIS 694 (Miss. Ct. App. 2004).

Differences in the numbers on the two B-31s Forms were mere corrections of the amount actually paid, and that no additional benefits were furnished to the claimant after his settlement; the filing of a B-31 Form containing errors as to the amount of the benefits paid was sufficient to begin the running of the statute of limitations and the filing of a corrected form did not interrupt the limitations period, even if it was without notice to the claimant. McCrimon v. Red Arrow Car Wash, 859 So. 2d 395, 2003 Miss. App. LEXIS 908 (Miss. Ct. App. 2003).

Under Mississippi law, the duty of workers' compensation carrier to pay benefits is owed by carrier to injured claimant. Rogers v. Hartford Accident & Indem. Co., 133 F.3d 309, 1998 U.S. App. LEXIS 442 (5th Cir. Miss. 1998).

Under Mississippi law, when workers' compensation carrier knows of insured's employee's injury, and insured does not controvert the injury, carrier has duty to begin paying benefits directly to injured claimant. Rogers v. Hartford Accident & Indem. Co., 133 F.3d 309, 1998 U.S. App. LEXIS 442 (5th Cir. Miss. 1998).

The proper credit due an employer under § 71-3-37(11) for wages paid to its employee was the amount of the weekly compensation rate for the number of weeks that the employee continued to work after his injury rather than the total earnings of the employee for the weeks worked. Sturgis v. International Paper Co., 525 So. 2d 813, 1988 Miss. LEXIS 256 (Miss. 1988).

Where there is a previous injury or disability, permanent partial disability benefits must be apportioned from the date of the claimant's maximum medical recovery. Central Electric & Machinery

Co. v. Shelton, 220 So. 2d 320, 1969 Miss. LEXIS 1454 (Miss. 1969).

The commission has full power and authority to determine all questions relating to claims for compensation, including the authority to make such investigations as it deems necessary; it has specific authority to order medical examinations; and comprehensive judicial review of the commission's action is provided for. Everitt v. Lovitt, 192 So. 2d 422, 1966 Miss. LEXIS 1257 (Miss. 1966).

The actuarial possibility of a woman's remarriage may be taken into account in determining the value of an executory interest taking effect in case of her remarriage. Hemphill v. Mississippi State Highway Com., 245 Miss. 33, 145 So. 2d 455, 1962 Miss. LEXIS 529 (Miss. 1962).

The allowance and payment of a lump sum does not discharge the continuing obligation to pay medical expenses, nor is such obligation to be considered in fixing such sum. J. H. Moon & Sons v. Hood, 244 Miss. 564, 144 So. 2d 782, 1962 Miss. LEXIS 477 (Miss. 1962).

An instalment of workmen's compensation which was due, but unpaid, at the time of the death of the beneficiary constitutes assets of his estate. Truck Trailer Sales & Service Co. v. Moore, 244 Miss. 317, 141 So. 2d 541, 1962 Miss. LEXIS 451 (Miss. 1962).

A claim for workmen's compensation, listed in bankruptcy proceedings as a debt of the employer, may be barred by his discharge, although the claim has not been adjudicated by the commission. Crum v. Dependents of Reed, 241 Miss. 111, 129 So. 2d 375, 1961 Miss. LEXIS 322 (Miss. 1961).

The controversion of a physician's report by a claimant, upon the ground that he was entitled to compensation for a longer period, did not operate as a controversion for the employer. White v. R. C. Owen Co., 232 Miss. 268, 98 So. 2d 650, 1957 Miss. LEXIS 468 (Miss. 1957).

An employer's purchase of a $5,000 policy on the life of an employee did not release him from liability to the widow and dependents of the employee for benefits they were entitled to under the Workmen's Compensation Law following the death of the employee in the course of employment. Riddell v. Estate of Cagle, 227 Miss. 305, 85 So. 2d 926, 1956 Miss. LEXIS 689 (Miss. 1956).

Where an award to the dependent mother of the deceased employee was ordered by the commission in instalments, from which she did not appeal and there was nothing in the commission record to show error in the commission not computing the award for lump sum payment, it was error in the circuit court to hear evidence dehors and to order an award to the mother in lump sum. Stephens v. Moore, 214 Miss. 760, 59 So. 2d 346, 1952 Miss. LEXIS 519 (Miss.), modified, 215 Miss. 3, 60 So. 2d 391, 1952 Miss. LEXIS 530 (Miss. 1952).

This section [Code 1942, § 6998-19] has reference to advance payments of compensation made by the employer to render temporary assistance to an employee or his dependent pending the termination of the claim for compensation, for which advance payments the employer would be entitled to be entirely reimbursed by the employee, since there is no reason why deductions from the payment when allowed shall be borne equally by the attorney and the client, the attorney receiving no benefit from such advance payments. American Sur. Co. v. Boykin, 212 Miss. 310, 54 So. 2d 398, 1951 Miss. LEXIS 453 (Miss. 1951).

Subsection c of § 26, ch. 354, Laws of 1948, as amended by Laws 1950, ch. 412, (Code 1942, § 6998-32), providing that where an award of compensation becomes final and an attorney fee is outstanding, a partial lump sum settlement sufficient to cover the attorney fee approved therein by the commission shall be made immediately from payments to become due, and the deductions allowed by law shall be borne equally by the attorney and client, has no reference to subsection (k) of Code 1942, § 6998-19. American Sur. Co. v. Boykin, 212 Miss. 310, 54 So. 2d 398, 1951 Miss. LEXIS 453 (Miss. 1951).

In computing compensation benefits to a widow, the probability of remarriage before the expiration of the 450 weeks during which the widow is entitled to compensation must be taken into account. United States Fidelity & Guaranty Co. v. Smith, 211 Miss. 573, 52 So. 2d 351, 1951 Miss. LEXIS 389 (Miss. 1951).

Where a man and woman lived together for three years and a child was born, but they did not hold themselves out as husband and wife, and both later separated and each of them contracted a ceremonial marriage, this was insufficient evidence to substantiate a common law marriage and the man's ceremonial marriage was valid, and the widow was entitled to compensation upon the death of her husband. United States Fidelity & Guaranty Co. v. Smith, 211 Miss. 573, 52 So. 2d 351, 1951 Miss. LEXIS 389 (Miss. 1951).

2. Employee's refusal to submit to medical or surgical treatment.

A claimant who, having requested and received payment of a lump settlement under subsection (j) of this section [Code 1942, § 6998-19], calculated upon the basis of permanent and total disability resulting as a consequence of an injury involving herniated intervertebral discs, and having, throughout the years which had elapsed since the injury, repeatedly and steadfastly refused to undergo a surgical procedure known as a laminectomy which would, in medical opinion, substantially reduce her disability below the total disability upon the basis of which she had received payment, and which in all probability would enable her to return to work, was not thereafter estopped to demand additional medical payments from the employer-carrier for the surgery she had previously declined, in the absence of a showing of fraud. Lawrin Co. v. Frazier, 213 So. 2d 548, 1968 Miss. LEXIS 1291 (Miss. 1968).

The commission's authority to order a claimant to submit to a medical examination by a physician of its choice is clear. Everitt v. Lovitt, 192 So. 2d 422, 1966 Miss. LEXIS 1257 (Miss. 1966).

While an injured workman will be denied compensation for incapacity which may be removed or modified by an operation of a simple character, not involving serious suffering or danger, where the operation is of a serious character, involves serious suffering or danger, or is doubtful of success, an injured employee's refusal to submit to such an operation is not unreasonable, and the right to compensation is not precluded by such refusal. Walker v. International Paper Co., 230 Miss. 95, 92 So. 2d 445, 1957 Miss. LEXIS 349 (Miss. 1957).

The burden of proving that an operation tendered to an insured workman is simple, safe, and will probably effect a cure or substantial improvement for the employee was upon the employer. Walker v. International Paper Co., 230 Miss. 95, 92 So. 2d 445, 1957 Miss. LEXIS 349 (Miss. 1957).

Whether an injured employee's refusal to submit to proper medical treatment is unreasonable is ordinarily a question of fact for the determination of the workmen's compensation commission. Walker v. International Paper Co., 230 Miss. 95, 92 So. 2d 445, 1957 Miss. LEXIS 349 (Miss. 1957).

Since the workmen's compensation commission's order, holding that a claimant's refusal to submit to surgery for a herniated disc was not unreasonable, was supported by substantial evidence, the commission's order awarding claimant compensation was reinstated and affirmed. Walker v. International Paper Co., 230 Miss. 95, 92 So. 2d 445, 1957 Miss. LEXIS 349 (Miss. 1957).

3. Penalties and interest, generally.

It was not necessary to assess a 10 percent penalty against an employer pursuant to Miss. Code Ann. § 71-3-37(5) because there were no unpaid workers' compensation benefits prior to an administrative law judge's award. Price v. Omnova Solutions, Inc., 17 So. 3d 104, 2009 Miss. App. LEXIS 86 (Miss. Ct. App.), cert. denied, 17 So. 3d 99, 2009 Miss. LEXIS 425 (Miss. 2009).

Where an administrative law judge for the Mississippi workers' compensation commission determined that a former employee was entitled to temporary total disability benefits for 64.75 weeks for a hip injury that remained due and owing as of a certain date, and to permanent partial disability benefits for 64.75 weeks beginning on a certain date for injury to the employee's hip, the court remanded the matter to the commission to determine when the employee became entitled to such payments and when each was made and, based on that, to determine whether the employee was entitled to penalties and interest for late payments pursuant to Miss. Code Ann. § 71-3-37(5). Smith v. Rizzo Farms, Inc., 870 So. 2d 1231, 2003 Miss. App. LEXIS 985 (Miss. Ct. App. 2003).

Employer of injured employee could avoid statutory penalties because it began payments to the employee for salary continuation beginning on the date of injury. Kemper Nat'l Ins. Co. v. Coleman, 812 So. 2d 1119, 2002 Miss. App. LEXIS 49 (Miss. Ct. App. 2002).

Rule requiring liberal construction of Workers' Compensation Act generally does not apply to provisions for imposing penalties, and such provisions are to be strictly construed; presumptions are against one claiming statutory penalty and all questions of doubt are resolved in favor of the one against whom penalty is sought to be imposed. Mississippi Transp. Comm'n v. Dewease, 691 So. 2d 1007, 1997 Miss. LEXIS 142 (Miss. 1997).

Workers' compensation claimant was not entitled to interest and penalties for past nursing services provided by his wife, where employer provided claimant with myriad services which contributed greatly to comfort and convenience of both claimant and his wife. Mississippi Transp. Comm'n v. Dewease, 691 So. 2d 1007, 1997 Miss. LEXIS 142 (Miss. 1997).

An injured employee's failure to request compensation did not preclude his employer's liability for the mandatory penalty for failure to pay compensation under § 71-3-37(5) where the employer had notice of the employee's injury and failed to file a notice of intention to controvert or show that the installment could not have been paid within the period prescribed for the payment because of conditions over which the employer had no control; by not voluntarily paying compensation, the employer assumed the risk of error despite the fact that it had no knowledge of the employee's status after he was terminated. Smith v. Jackson Constr. Co., 607 So. 2d 1119, 1992 Miss. LEXIS 487 (Miss. 1992).

Both the 10 percent penalty imposed for failure to pay an installment of compensation payable without an award within 14 days after it becomes due, and the 20 percent penalty for failure to pay an installment payable under the terms of an award within 14 days after it becomes due, could be imposed upon the same installments of compensation, so that when an employer failed to pay a judgment within 14 days after the award became final, the 20 percent penalty applied to the judgment, which consisted of vested installments together with interest and the 10 percent penalty, as well as to installments due after the award. Delchamps, Inc. v. Baygents, 578 So. 2d 620, 1991 Miss. LEXIS 189 (Miss. 1991).

The Workers' Compensation Commission erred in assessing statutory penalties against unpaid medical expenses. International Paper Co. v. Kelley, 562 So. 2d 1298, 1990 Miss. LEXIS 274 (Miss. 1990).

The 10 percent statutory penalty was waived where dependents of deceased workman failed to request imposition thereof to the administrative judge or the full commission. M & J Oil Co. v. Dependents of Wilson, 498 So. 2d 344, 1986 Miss. LEXIS 2773 (Miss. 1986).

Employer is not subject to penalty for weeks in which employer pays or causes to be paid to claimant amount under company benefit plan which is in excess of amount otherwise payable as worker's compensation; employer is liable for failure to pay compensation after period of compensation under company benefit plan has ended. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584, 1985 Miss. LEXIS 2197 (Miss. 1985).

There are only 3 circumstances under which employer may of right claim relief from burdens of penalty assessed by Commission in accordance with § 71-3-37: (1) that employer has paid compensation installments within 14 days of due date; (2) in alternative, that employer has filed notice to controvert within 14 days of day notice of injury is received; or (3) that nonpayment is result of conditions over which employer has no control. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584, 1985 Miss. LEXIS 2197 (Miss. 1985).

Penalty provisions of Workers' Compensation Act (§ 71-3-37), designed to provide measure of compensation where claims are not promptly paid due to negligence of carrier, are inadequate to deter intentional wrongdoing by carrier; injured worker may bring common law tort action against carrier predicated upon carrier's intentional refusal to pay workers' compensation medical and weekly compensation benefits notwithstanding admitted residual permanent disability. Southern Farm Bureau Casualty Ins. Co. v. Holland, 469 So. 2d 55, 1984 Miss. LEXIS 2054 (Miss. 1984).

An employee was not entitled to a penalty award for the period from his initial hospitalization to the filing of his claim more than eight months later; however, a penalty award would be assessed against the employer and its carrier from the date the employee had filed a motion to controvert where the employer had not responded to the claim for more than three months after it had been filed. Sperry-Vickers, Inc. v. Honea, 394 So. 2d 1380, 1981 Miss. LEXIS 1968 (Miss. 1981).

Where the record disclosed a contract for attorney's fees of one-third, and also revealed that the employer and the workmen's compensation insurance carrier did not file notice to controvert the claim within the time allowed by Code 1942, § 6998-19 a judgment on the claim would be modified to allow the attorney's fee, statutory interest, and the statutory penalty, to be fixed in the amount found to be due by the commission. Tiller v. Southern U. S. F., Inc., 246 So. 2d 530, 1971 Miss. LEXIS 1405 (Miss. 1971).

The imposition of the penalty provided by this section [Code 1942, § 6998-19] is mandatory where the facts justify its imposition. New & Hughes Drilling Co. v. Smith, 219 So. 2d 657, 1969 Miss. LEXIS 1422 (Miss. 1969).

The failure of a claimant to timely petition the enforcement of the penalty provided by this section [Code 1942, § 6998-19] constitutes a waiver of his right to do so. New & Hughes Drilling Co. v. Smith, 219 So. 2d 657, 1969 Miss. LEXIS 1422 (Miss. 1969).

The penalty should not be exacted from one who, having voluntarily paid compensation in another state and obtained a settlement agreement, has resisted a claim made under the Mississippi statute. Harrison Co. v. Norton, 244 Miss. 752, 146 So. 2d 327, 1962 Miss. LEXIS 504 (Miss. 1962).

This penalty is for nonpayment of weekly installments of compensation, and not of medical expenses. J. H. Moon & Sons v. Hood, 244 Miss. 564, 144 So. 2d 782, 1962 Miss. LEXIS 477 (Miss. 1962).

Motion to dismiss and for statutory damages, penalties and interest would be denied where the appeal was timely taken. Dapsco, Inc. v. Dependent of Upchurch, 243 Miss. 427, 138 So. 2d 287, 1962 Miss. LEXIS 359 (Miss. 1962).

4. —Interest.

Finding in favor of the employee in his workers' compensation action was proper pursuant to Miss. Code Ann. §§ 71-3-17(c)(25), 71-3-37(5), and 71-3-15, where the employee offered medical proof that the injury manifested its symptoms in an area other than that of the initial impact; further, the computation of disability benefits totaled one cent less than the amount awarded by the administrative judge and the appellate court did not find that a one-cent rounding error difference was arbitrary or capricious, Miss. Code Ann. § 71-3-17(25). Cives Steel Co. Port of Rosedale v. Williams, 905 So. 2d 661, 2004 Miss. App. LEXIS 505 (Miss. Ct. App. 2004).

A claimant is entitled to interest on unpaid installments of a referee's award from their due dates until the commission's modification of the award. Busby v. Ingalls Shipbuilding Corp., 236 Miss. 870, 113 So. 2d 126, 1959 Miss. LEXIS 384 (Miss. 1959).

Supreme court, on reversing denial of compensation, may require payment of interest on each instalment from its due date until paid. Goodnite v. Farm Equipment Co., 234 Miss. 342, 103 So. 2d 391, 1958 Miss. LEXIS 563 (Miss. 1958).

Claimants were entitled to interest at 6 percent per annum from the respective due dates of workmen's compensation payments until paid or tendered. Dependents of Harris v. Suggs, 233 Miss. 533, 102 So. 2d 696, 1958 Miss. LEXIS 413 (Miss. 1958).

Where the insurance carrier discontinued compensation payments to the claimant without notice to or authority from the commission, the claimant was entitled to a penalty of 10 percent on unpaid installments which were more than 14 days overdue, together with interest to be paid on each weekly instalment. Cumbest Mfg. Co. v. Pinkney, 225 Miss. 318, 83 So. 2d 74, 1956 Miss. LEXIS 783 (Miss. 1956).

5. —Penalty without award.

Where claimant was injured in January 27, 1965, and notice was given to the employer on the same day, and the claim was not controverted until May 3, 1965, subsequent to the filing of a claim for benefits on April 7, 1965, the claimant would clearly have been entitled to the penalty provided by this section [Code 1942, § 6998-19], had timely request been made therefor. New & Hughes Drilling Co. v. Smith, 219 So. 2d 657, 1969 Miss. LEXIS 1422 (Miss. 1969).

The assessment of the penalty provided by this section [Code 1942, § 6998-19] is mandatory where the facts coincide with those mentioned in subsection (e) of this section. Murphy v. Jac-See Packing Co., 208 So. 2d 773, 1968 Miss. LEXIS 1428 (Miss. 1968).

Where the carrier had sufficient notice of a claim of injury and neither filed notice to controvert the claim nor, due to circumstances beyond its control, sought to be excused therefrom, it was error on the part of the commission and the circuit court not to award the 10 percent penalty. Goasa & Son v. Goasa, 208 So. 2d 575, 1968 Miss. LEXIS 1413 (Miss.), overruled, Cockrell Banana Co. v. Harris, 212 So. 2d 581, 1968 Miss. LEXIS 1290 (Miss. 1968).

The workmen's compensation commission has no discretion in the application of subsection (e) of this section [Code 1942, § 6998-19] and must impose the penalty unless the same is controverted by the carrier or employer or is excused by the commission. Goasa & Son v. Goasa, 208 So. 2d 575, 1968 Miss. LEXIS 1413 (Miss.), overruled, Cockrell Banana Co. v. Harris, 212 So. 2d 581, 1968 Miss. LEXIS 1290 (Miss. 1968).

Where compensation awards were not made in compliance with subsection (e) of this section [Code 1942, § 6998-19], the claimant was entitled to the 10 percent penalty. Knight v. Stachel, 193 So. 2d 593, 1967 Miss. LEXIS 1554 (Miss. 1967).

A 10 percent penalty is applicable only to instalments of compensation that become due between the due date of the first instalment and the date of the attorney-referee's award, and a penalty award on future compensation instalments could not be allowed. Medart Lockers, Inc. v. Yarbrough, 251 Miss. 124, 168 So. 2d 660, 1964 Miss. LEXIS 333 (Miss. 1964).

Where the dependents' claim for compensation was filed about 2 ½ months after the death of the deceased, and was immediately controverted by the employer and its insurance carrier, and no compensation was paid to the dependents within 14 days after it became due, nor did the employer or its insurance carrier controvert the claim within 14 days, as required by subsection (d) of this section [Code 1942, § 6998-19], the commission did not abuse its discretion in assessing the 10 percent penalty provided for in subsection (e), and making these penalties applicable to all instalments of compensation that became due between the date of the first instalment and the date of the attorney-referee's award. Truck Trailer Sales & Service Co. v. Moore, 244 Miss. 317, 141 So. 2d 541, 1962 Miss. LEXIS 451 (Miss. 1962).

A penalty is properly imposed upon an employer who, though reporting the alleged injury, neither paid compensation nor controverted the claim. Maloney Constr. Co. v. Strickland, 237 Miss. 440, 114 So. 2d 851, 1959 Miss. LEXIS 488 (Miss. 1959).

The allowance of a penalty against an employer for failure to pay compensation without an award is optional with the commission. Gulf Park College v. Wheeler, 237 Miss. 155, 113 So. 2d 666, 1959 Miss. LEXIS 458 (Miss. 1959).

Where the employer did not controvert the claim within 14 days, nor did it begin paying compensation, the assessment of a 10 percent penalty was mandatory. Dependents of Harris v. Suggs, 233 Miss. 533, 102 So. 2d 696, 1958 Miss. LEXIS 413 (Miss. 1958).

The 10 percent penalty is applicable to all instalments of compensation that became due between the due date of the first instalment and the date of the attorney-referee's award. Dependents of Harris v. Suggs, 233 Miss. 533, 102 So. 2d 696, 1958 Miss. LEXIS 413 (Miss. 1958).

Where the employer failed to make compensation payments within 14 days after receiving a report by attending physicians elected by the employer, showing the extent of the employee's eye injury, did not controvert the right to compensation, and failed to make payments even following the decisions of the attorney-referee, the commission, or the circuit court, the employer, in the absence of a sufficient showing in the record of tender of payment, was in default and the 10 percent penalty should have been allowed. White v. R. C. Owen Co., 232 Miss. 268, 98 So. 2d 650, 1957 Miss. LEXIS 468 (Miss. 1957).

Where the employer had notice of the employee's injury from the time it occurred and had had notice within a month thereafter that the employee claimed that injury arose out of and in course of his employment, but the employer, after completing an investigation, merely advised the commission that the employer was not in position to give the case further attention and failed to file a notice to controvert, the commission should have expressly adjudicated that the employer was liable for the 10 percent penalty on all instalments due and unpaid at the time the commission made its award. Alexander Smith, Inc. v. Genette, 232 Miss. 166, 98 So. 2d 455, 1957 Miss. LEXIS 457 (Miss. 1957).

Where it was admitted that the self-insurer did not comply with the Workmen's Compensation Law in regard to compensation payments, the 10 percent penalty required by subsection (e) of this section [Code 1942, § 6998-19] was allowed. James F. O'Neil, Inc. v. Livings, 232 Miss. 118, 98 So. 2d 148, 1957 Miss. LEXIS 451 (Miss. 1957).

Where an employer fails to controvert the right to compensation within 14 days from the date of knowledge of an injury or death and later raises a defense when claim is subsequently filed, and the commission makes an award of compensation, the 10 percent penalty applies to those instalments of compensation becoming due between the due date of the first instalment and the date the commission makes the award of compensation. Southern Engineering & Electric Co. v. Chester, 226 Miss. 136, 83 So. 2d 811, 1955 Miss. LEXIS 617 (Miss. 1955).

6. —Penalty under award.

Compensation is not apportionable until the date of maximum medical recovery, regardless of whether an injury is permanent and total or of lower quality and character; thus, a 10% penalty was correctly applied to the unapportioned amounts payable prior to the date of maximum medical recovery. M. D. Hayles Lumber, Inc. v. Hamilton, 366 So. 2d 1075, 1978 Miss. LEXIS 2440 (Miss. 1978).

Where there was a review of the order making the award of compensation for injuries received in an industrial accident, it was not mandatory that the commission should assess the 20 percent penalty, provided for by subsection (f) of this section [Code 1942, § 6998-19], even though the review was not at the instance of the employer. White v. R. C. Owen Co., 232 Miss. 268, 98 So. 2d 650, 1957 Miss. LEXIS 468 (Miss. 1957).

Subsection (f) of this section [Code 1942, § 6998-19], providing that the 20 percent penalty should be assessed if any installment payment under the terms of an award is not made within 14 days after it becomes due, construed to mean that the period of 14 days should be calculated from the date the order making the award becomes final. T. C. Fuller Plywood Co. v. Moffett, 231 Miss. 382, 95 So. 2d 475, 1957 Miss. LEXIS 523 (Miss. 1957).

Where a compensation insurance carrier, who had been ordered by the workmen's compensation commission to make compensation payments to the claimant, complied with the commission's order 23 days after the date the order was entered and seven days before the time the statutory right of appeal from the order had expired, the claimant was not entitled to the 20 percent penalty provided by paragraph (f) of this section [Code 1942, § T. C. Fuller Plywood Co. v. Moffett, 231 Miss. 382, 95 So. 2d 475, 1957 Miss. LEXIS 523 (Miss. 1957).

7. —Penalty for suspension of payment.

Although the commission may invoke penalties against an employer-insurer which improperly suspends compensation payments being made without an award, the imposition of such penalties is not mandatory, but optional with the commission. Weyerhaeuser Co. v. Ratliff, 197 So. 2d 231, 1967 Miss. LEXIS 1516 (Miss. 1967).

Where the claims manager for a carrier discontinued compensation to claimant and paid nothing for more than 3 months without notice to or authority from the commission, the claimant is not only entitled to the payments during this period but, in addition thereto, he is entitled to a penalty of 10 percent on these unpaid payments. Guess v. Southeastern Utilities Service Co., 226 Miss. 637, 85 So. 2d 173, 1956 Miss. LEXIS 442 (Miss. 1956).

Where the insurance carrier discontinued compensation payments to the claimant without notice to or authority from the commission, the claimant was entitled to a penalty of 10 percent on unpaid instalments which were more than 14 days overdue, together with interest to be paid on each weekly instalment. Cumbest Mfg. Co. v. Pinkney, 225 Miss. 318, 83 So. 2d 74, 1956 Miss. LEXIS 783 (Miss. 1956).

8. —Upon appeal.

Penalty for unsuccessful appeal is appropriate only when lower court's decision in workers' compensation case is affirmed in its entirety. Mississippi Transp. Comm'n v. Dewease, 691 So. 2d 1007, 1997 Miss. LEXIS 142 (Miss. 1997).

The question of penalties under this section [Code 1942, § 6998-19] may not be raised for the first time on appeal to the supreme court. New & Hughes Drilling Co. v. Smith, 219 So. 2d 657, 1969 Miss. LEXIS 1422 (Miss. 1969).

Neither payment nor penalty for nonpayment can be required of an employer-insurer while an appeal by the claimant is pending. Weyerhaeuser Co. v. Ratliff, 197 So. 2d 231, 1967 Miss. LEXIS 1516 (Miss. 1967).

Reviewing court will not interfere with commissioner's imposition of penalties which is not manifestly wrong. Smith v. Crown Rigs, Inc., 245 Miss. 311, 148 So. 2d 195, 1963 Miss. LEXIS 521 (Miss. 1963).

Where claimant's attorneys, at the beginning of the hearing before the attorney-referee, moved that, in the event the claimant's claim was found to be compensable, all penalties provided for in subsections (e) and (g), be assessed against the insurance carrier and its employer, but no mention was made of the assessment of penalties when the matter was heard by the commission on review and claimant prosecuted no cross-appeal to the circuit court, the matter of allowing penalties under this section [Code 1942, § 6998-19] was not before the supreme court on appeal. Fair Stores v. Bryant, 238 Miss. 434, 118 So. 2d 295, 1960 Miss. LEXIS 424 (Miss. 1960).

A claimant is not entitled to the 5% penalty where delay in payment of an award is occasioned by his unsuccessful appeal. Busby v. Ingalls Shipbuilding Corp., 236 Miss. 870, 113 So. 2d 126, 1959 Miss. LEXIS 384 (Miss. 1959).

A claimant is entitled to a 10% penalty for failure to pay installments payable without an award, where the circuit court has reinstated an order of the attorney-referee to that effect, and the supreme court has affirmed the circuit court. Komp Equipment Co. v. Clinton, 236 Miss. 560, 112 So. 2d 541, 1959 Miss. LEXIS 351 (Miss. 1959).

Supreme court on reversing denial of compensation may require payment of interest on each instalment from its due date until paid. Goodnite v. Farm Equipment Co., 234 Miss. 342, 103 So. 2d 391, 1958 Miss. LEXIS 563 (Miss. 1958).

Penalties on compensation installments to date of attorney-referee's order denying compensation will not be allowed on removal by the supreme court where it does not appear that penalties were requested before the attorney-referee, the commission, in the circuit court, and denial thereof was not assigned error or argued in supreme court. Poole v. R. F. Learned & Son, 234 Miss. 362, 103 So. 2d 396, 1958 Miss. LEXIS 503 (Miss.), modified, Poole v. R. F. Learned & Sons, 234 Miss. 362, 105 So. 2d 162, 1958 Miss. LEXIS 504 (Miss. 1958).

Where the judgment of the circuit court in a workman's compensation case was affirmed on the employer's direct appeal but reversed on the worker's cross appeal and the cause was remanded to workmen's compensation commission with directions to assess and order the payment of the penalty provided for in paragraph (e) of this section [Code 1942, § 6998-19], the worker was also entitled to a judgment for the five percent damages provided in Code 1942, § 1971, on the weekly instalment which had already accrued and remained unpaid on the date of the entry of the judgment of affirmance. Alexander Smith, Inc. v. Genette, 232 Miss. 166, 98 So. 2d 455, 1957 Miss. LEXIS 457 (Miss. 1957).

Where a claimant, appealing from the decision of the workmen's compensation commission to the circuit court, successfully contended that he was entitled to recover the 20 percent penalty as provided for in subsection (f) of this section [Code 1942, § 6998-19], but was unsuccessful as to his contention that the entire award should have been judged to be due and payable, as provided in Code 1942, § 6998-25, court was authorized under Code 1942, § 1593, to apportion the cost between the parties. T. C. Fuller Plywood Co. v. Moffett, 231 Miss. 382, 95 So. 2d 475, 1957 Miss. LEXIS 523 (Miss. 1957).

9. Notice as to closing of case.

Workers' Compensation Commission erred in determining that an employee's petition to controvert was timely because his employer and its workers' compensation insurer complied with the statutory requirements by twice mailing the employee a Form B-31, providing him an opportunity to sign the Form, and informing him of the time limitations, and upon his failure to sign and return the Form, they provided him with notice, via certified mail, that an unsigned Form had been filed with the Commission. Leggett & Platt v. Brinkley, 150 So. 3d 106, 2014 Miss. App. LEXIS 576 (Miss. Ct. App. 2014).

Where an insurance carrier on June 16, 1977, wrote to the claimant in care of his attorney, enclosing a copy of the Final Report and Settlement Receipt and asking him to note that the form had been received in the Workmen's Compensation Commission offices on June 9th, 1977, the one-year statute of limitations begun to run on June 16, 1977, and, therefore, the claimant's application for benefits filed with the Commission on June 16, 1978, was timely. Staple Cotton Services Asso. v. Russell, 399 So. 2d 224, 1981 Miss. LEXIS 2019 (Miss. 1981).

Where a workmen's compensation insurance carrier mailed the final report and settlement receipt form to the claimant and the workmen's compensation commission with the notation "original hereof this date mailed to commission" it was not sufficiently established that the claimant was given notice that the form had actually been filed with the commission so as to close the claim for compensation benefits and set in motion the one year statute of limitations within which the claimant would be required to have the matter reviewed by the commission, because of an alleged mistake in a determination of fact. McLemore v. Jackson Tile Mfg. Co., 252 So. 2d 781, 1971 Miss. LEXIS 1199 (Miss. 1971).

Where claimant, injured on Jan. 15, 1960, signed final settlement report filed on Feb. 18, 1960, and filed claim for same injury on Mar. 20, 1961, and subsequently on Oct. 31, 1962 amended his claim to include injuries occurring on May 1, 1960, question of whether amendment related back to date of filing original claim so as to take it out of a 1-year and 2-year limitations periods depended upon whether later injury was a new injury or further disability for previous injury, and this was a question of fact to be determined by commission. Yazoo Mfg. Co. v. Schaffer, 254 Miss. 35, 179 So. 2d 784, 1965 Miss. LEXIS 921 (Miss. 1965).

Workman who signs final report and settlement receipt had notice that his employer was claiming that the payments set out in the report and receipt form were final payments, and the filing of the form complied with the requirement of subsection (g) of this section [Code 1942, § 6998-19], and consequently a claim filed with the commission more than a year later was barred by the limitation period set out in Code 1942, § 6998-27. Yazoo Mfg. Co. v. Schaffer, 254 Miss. 35, 179 So. 2d 784, 1965 Miss. LEXIS 921 (Miss. 1965).

As against a claimant who had refused to sign the final report and settlement receipt submitted to him, the one-year limitation period provided for in Code 1942, § 6998-27 did not begin to run until he had received notice that the employer had filed with the workmen's compensation commission a final report and settlement receipt, properly filled out. International Paper Co. v. Evans, 244 Miss. 49, 140 So. 2d 271, 1962 Miss. LEXIS 422 (Miss. 1962).

The limitations period provided for in Code 1942, § 6998-27 must be considered in connection with subsection (g) of this section [Code 1942, § 6998-19], providing that no case shall be closed without notice to all parties interested and without giving to all such parties an opportunity to be heard. International Paper Co. v. Evans, 244 Miss. 49, 140 So. 2d 271, 1962 Miss. LEXIS 422 (Miss. 1962).

That a compensated employee, upon making a lump-sum settlement, signed a final receipt does not preclude him from seeking to have his case reopened for redetermination of the extent of his disability. Armstrong Tire & Rubber Co. v. Franks, 242 Miss. 792, 137 So. 2d 141, 1962 Miss. LEXIS 594 (Miss. 1962).

Before the statute of limitation provided by Code 1942, § 6998-27 begins to run there must be a compliance with the provisions of subsection (g) of Code 1942, § 6998-19. Shainberg's Black & White Store v. Prothro, 238 Miss. 444, 118 So. 2d 862, 1960 Miss. LEXIS 425 (Miss. 1960).

Oral notice given to claimant by insurance carrier's adjuster that the carrier considered the claim to be barred by the statute of limitations was not sufficient compliance with the notice requirement of subsection (g) of this section [Code 1942, § 6998-19]. Shainberg's Black & White Store v. Prothro, 238 Miss. 444, 118 So. 2d 862, 1960 Miss. LEXIS 425 (Miss. 1960).

Filling of a final report and settlement receipt closes a case as to payments of compensation. Graeber Bros., Inc. v. Taylor, 237 Miss. 691, 115 So. 2d 735, 1960 Miss. LEXIS 502 (Miss. 1960).

Where the requirements of subsection (g) of Code 1942, § 6998-19 had been fully complied with by the employer and its insurance carrier, the workmen's compensation commission was without jurisdiction of a claim for compensation made more than 3 years after the closing of the case. Carter v. Wrecking Corp. of America, 234 Miss. 559, 107 So. 2d 116, 1958 Miss. LEXIS 529 (Miss. 1958).

Adequate notice to claimant of the closing of his case is given by sending him a copy of a report on a form prescribed by the commission entitled Final Report and Settlement Receipt, notwithstanding error therein as to the period for which compensation had been paid and as to the date on which he was pronounced able to work. Carter v. Wrecking Corp. of America, 234 Miss. 559, 107 So. 2d 116, 1958 Miss. LEXIS 529 (Miss. 1958).

Code 1942, § 6998-27, which provides that the commission may, at any time prior to one year after the date of the last payment of compensation, review a compensation case, does not apply until there has been compliance with the mandatory provisions of subsection (g) of this section [Code 1942, § 6998-19]. Hale v. General Box Mfg. Co., 228 Miss. 394, 87 So. 2d 679, 1956 Miss. LEXIS 526 (Miss. 1956).

It was not the intent of the legislature to require that there be a formal hearing by the commission in order to close employee's claim of voluntary payments, and the fact that no such hearing was held did not render statute inapplicable which limited period of commencement of suit for additional compensation to within one year after receipt of final payment. H. C. Moody & Sons v. Dedeaux, 223 Miss. 832, 79 So. 2d 225, 1955 Miss. LEXIS 445 (Miss. 1955).

10. Lump sum payments.

Denial of a workers' compensation claimant's motion to disregard the Miss. Code Ann. § 71-3-37(10) requirement of using a mortality table to determine the present value of future compensation payments for making a lump-sum payment was proper as the statute was mandatory as it used the word "shall" and plainly required that the probability of the death of the claimant be determined using validated actuarial tables or factors; even though the claimant had outlived his usual life expectancy, the probability of the happening of any other contingency affecting the amount or duration of the compensation had to be disregarded. Brock v. Wal-Mart #1260, 105 So. 3d 1151, 2012 Miss. App. LEXIS 806 (Miss. Ct. App. 2012).

RESEARCH REFERENCES

ALR.

Insurance carrier's liability for part of employer's liability attributable to violation of law or other misconduct on his part. 1 A.L.R.2d 407.

Workmen's compensation: crediting employer or insurance carrier with earnings of employee re-employed, or continued in employment, after injury. 84 A.L.R.2d 1108.

Postaccident conduct by employer, employer's insurer, or employer's employees in relation to workers' compensation claim as waiving, or estopping employer from asserting, exclusivity otherwise afforded by workers' compensation statute. 120 A.L.R.5th 513.

Am. Jur.

82 Am. Jur. 2d, Workmen's Compensation §§ 607 et seq.

25 Am. Jur. Pl and Pr Forms (Rev), Workmen's Compensation, Forms 1 et seq.

CJS.

99 C.J.S., Workers' Compensation §§ 624 et seq.

101 C.J.S., Workers' Compensation §§ 1452-1455 et seq.

Law Reviews.

1982 Mississippi Supreme Court Review: Administrative Law: Workmen's Compensation. 53 Miss. L. J. 113, March 1983.

1984 Mississippi Supreme Court Review: Administrative Law. 55 Miss. L. J. 25, March, 1985.

Comment, Insurance Bad Faith in Mississippi, 55 Miss. L. J. 485, September 1985.

Practice References.

Larson's Workers' Compensation Law (Matthew Bender).

§ 71-3-38. Special workers' compensation account for payment.

While acting as a self-insurer as authorized by Section 71-3-5, the state highway commission is authorized and empowered to establish and maintain, from funds made available upon requisition from the state treasury, a special workmen's compensation account, and to deposit such funds therein, and to pay therefrom the workmen's compensation benefits as authorized by Section 71-3-37, and to pay such awards as may be entered and such other costs, expenses and benefits as may be incidental to the settlement of such workmen's compensation claims. Disbursement from such special account shall be by check properly drawn against such account and signed by such personnel as may be duly authorized by the state highway commission. Payment from the special account shall be deemed payments of and from the State of Mississippi.

HISTORY: Laws, 1982, ch. 424; reenacted without change, Laws, 1990, ch. 405, § 20, eff from and after July 1, 1990.

Editor's Notes — Chapter 408 of Laws of 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission."

Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

§ 71-3-39. Recording and reporting of payments.

Every insurance company which transacts the business of compensation insurance and every employer who is subject to the workmen's compensation law, but who has not insured his liability, shall keep a record of all payments made under the provisions of this law, and of the time and manner of making such payments, and shall furnish such reports based upon these records to the workmen's compensation commission as it may require by general order, upon forms approved by the commission.

HISTORY: Codes, 1942, § 6998-20; Laws, 1948, ch. 354, § 14; reenacted without change, Laws, 1982, ch. 473, § 20; reenacted without change, Laws, 1990, ch. 405, § 21, eff from and after July 1, 1990.

Editor's Notes — Chapter 408 of Laws of 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission."

§ 71-3-41. Invalid agreements.

No agreement by an employee to pay any portion of premium paid by his employer or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this chapter shall be valid. Any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than One Thousand Dollars ($1,000.00).

No agreement by an employee to waive his right to compensation under this law shall be valid.

HISTORY: Codes, 1942, § 6998-21; Laws, 1948, ch. 354, § 15; reenacted without change, Laws, 1982, ch. 473, § 21; reenacted without change, Laws, 1990, ch. 405, § 22, eff from and after July 1, 1990.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Successful settlement agreement with employer and co-employees on tort claim does not per se bar recovery of workers' compensation benefits, and such benefits were granted where liability carrier of employer, which was not same as employer's workers' compensation carrier, entered into settlement agreement with claimants to "buy its way out of a possible action at common-law," where settlement agreement entered into was in effect waiver of employer's right to defend common-law action on basis of exclusiveness of worker's compensation remedy. Sawyer v. Head, 510 So. 2d 472, 1987 Miss. LEXIS 2427 (Miss. 1987).

Any agreement in the state in which one is hired to do work in Mississippi to waive his rights under the Mississippi Workmens' Compensation Law cannot operate to bar such rights. Harrison Co. v. Norton, 244 Miss. 752, 146 So. 2d 327, 1962 Miss. LEXIS 504 (Miss. 1962).

RESEARCH REFERENCES

Am. Jur.

82 Am. Jur. 2d, Workers' Compensation §§ 468.

CJS.

100 C.J.S., Workers' Compensation §§ 759, 762.

§ 71-3-43. Assignment and exemption from claims of creditors.

No assignment, release, or commutation of compensation or benefits due or payable under this chapter, except as provided by this chapter, shall be valid; and such compensation and benefits shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may be waived. This section prevails over Sections 75-9-406 and 75-9-408 of Article 9 of the Uniform Commercial Code to the extent, if any, that these sections may otherwise be applicable.

HISTORY: Codes, 1942, § 6998-22; Laws, 1948, ch. 354, § 16; reenacted without change, Laws, 1982, ch. 473, § 22; reenacted without change, Laws, 1990, ch. 405, § 23; Laws, 2001, ch. 495, § 23, eff from and after Jan. 1, 2002.

Cross References — Levy of executions and attachments, see §§ 13-3-123 et seq.

Property exempt from execution or attachment generally, see §§ 85-3-1 et seq.

JUDICIAL DECISIONS

1. In general.

Imprisonment of a claimant who is already receiving permanent partial workers' compensation disability payments does not preclude the claimant from receiving those payments during the period of incarceration since permanent disability benefits are based upon a claimant's permanent loss of capacity to earn wages "at the time of injury"; moreover, the Workers' Compensation Act is silent as to what happens when a claimant who is entitled to permanent disability benefits is subsequently incarcerated, and § 71-3-43 seems to be an intent to protect the benefits for the injured party and implies that any deviation from payment to the claimant must be done by legislative act. Hardin's Bakery v. Taylor, 631 So. 2d 201, 1994 Miss. LEXIS 43 (Miss. 1994).

A trial judge in a homicide prosecution erred by ordering a claim against the defendant's workers' compensation benefits to secure payment of restitution since § 71-3-43 provides that workers' compensation benefits are exempt from all creditors' claims and from any remedy for recovery of a debt; moreover, under § 99-37-13, imposition of levy of execution for the collection of restitution is not authorized until the defendant is in default in his payment, and the defendant could not have been in default since the order of restitution was not yet enforceable where the defendant was also sentenced to imprisonment and the trial judge did not expressly find that he had assets to pay the amount ordered. Green v. State, 631 So. 2d 167, 1994 Miss. LEXIS 13 (Miss. 1994).

RESEARCH REFERENCES

ALR.

Validity, construction, and effect of statutory exemptions of proceeds of workers' compensation awards. 48 A.L.R.5th 473.

Enforcement of claim for alimony or

support, or for attorneys' fees and costs incurred in connection therewith, against exemptions. 52 A.L.R.5th 221.

Am. Jur.
82 Am. Jur. 2d, Workers' Compensation § 9.

CJS.
100 C.J.S., Workers' Compensation §§ 730, 731.

§ 71-3-45. Compensation a lien against assets.

Any person entitled to compensation under the provisions of this chapter shall have a lien against the assets of the carrier or employer for such compensation without limit of amount, and shall, upon insolvency, bankruptcy, or reorganization in bankruptcy proceedings of the carrier or employer, or both, be entitled to preference and priority in the distribution of the assets of such carrier or employer, or both.

HISTORY: Codes, 1942, § 6998-23; Laws, 1948, ch. 354, § 17; reenacted without change, Laws, 1982, ch. 473, § 23; reenacted without change, Laws, 1990, ch. 405, § 24, eff from and after July 1, 1990.

Cross References — Enforcement of lien generally, see §§ 85-7-141 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Statutory Lien.

1. In general.

Creditor, apparently relying on Miss. Code Ann. § 71-3-45, contended that he held a statutory lien against debtor, and, in this context, asserted that debtor should have filed a complaint to avoid his statutory lien while the bankruptcy case was being administered. The problem with his reasoning was five-fold, to-wit: (1) debtor disputed that the creditor was entitled to compensation under the Worker's Compensation Act, (2) there was never an adjudication in the state court worker's compensation proceeding that the creditor was entitled to a claim against debtor in any amount; as such, there was no determination that the creditor was entitled to compensation under the provisions of the Worker's Compensation Act, and, because of this, he did not have a lien against any assets owned by debtor, (3) even if there had been an adjudication that the creditor was entitled to compensation in a liquidated amount which, in effect, would have been a judgment in his favor, debtor owned no unencumbered, non-exempt assets to which the judgment lien could attach, (4) because the creditor had not filed a complaint objecting to the dischargeability of his debt or objecting to debtor's bankruptcy discharge in general, the creditor's claim inevitably was going to be discharged as a result of debtor's Chapter 7 filing, and (5) because there was no lien of any description in favor of the creditor against debtor during the time that this bankruptcy case was being administered, there was no reason whatsoever for debtor to file a motion or a complaint to avoid the lien. In re Parkerson, 2010 Bankr. LEXIS 4597 (Bankr. N.D. Miss. Dec. 13, 2010).

A claim for workmen's compensation listed in bankruptcy proceedings as a debt of the employer may be barred by his discharge, although the claim was not adjudicated by the commission. Crum v. Dependents of Reed, 241 Miss. 111, 129 So. 2d 375, 1961 Miss. LEXIS 322 (Miss. 1961).

2. Statutory Lien.

Because an employer disputed that an employee was entitled to compensation, and because there was never an adjudication that the employee was entitled to a claim against the employer in any amount, the employee did not have a statutory lien, as defined by 11 U.S.C.S. § 101(53), under Miss. Code Ann. § 71-3-45 against the employer's bankruptcy assets. Sanders v. Parkerson, 2011 U.S. Dist. LEXIS 18492 (N.D. Miss. Feb. 24, 2011).

RESEARCH REFERENCES

Am. Jur.
82 Am. Jur. 2d, Workers' Compensation § 611.

CJS.
101 C.J.S., Workers' Compensation §§ 1464, 1467.

§ 71-3-47. Determination for claims for compensation.

Except as otherwise provided by this chapter, the details of practice and procedure in the settlement and adjudication of claims shall be determined by rules of the commission, the text of which shall be published and be readily available to interested parties.

The commission shall have full power and authority to determine all questions relating to the payment of claims for compensation. The commission shall make or cause to be made such investigation as it deems necessary and, upon application of either party or upon its own initiative, shall order a hearing, shall make or deny an award, and shall file the same in its office.

Informal conferences and hearings in contested cases may be conducted by a duly designated representative of the commission. Upon the conclusion of any such hearing, the commission's representative shall make or deny an award, and file the decision in the office of the commission. Immediately after such filing, a notice of decision shall be sent to all interested parties. This decision shall be final unless within twenty (20) days a request or petition for review by the full commission is filed.

HISTORY: Codes, 1942, § 6998-24; Laws, 1948, ch. 354, § 18; Laws, 1950, ch. 412, § 9; reenacted without change, Laws, 1982, ch. 473, § 24; reenacted without change, Laws, 1990, ch. 405, § 25, eff from and after July 1, 1990.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jurisdiction of commission.
3. Attorney-referee.
4. Evidence, generally.
5. —Medical or expert testimony.
6. —Sufficiency.
7. — —Established.
8. — —Not established.
9. —Conflicting testimony.
10. Burden of proof.
11. Timeliness of petition.

1. In general.

There was substantial evidence to support the decision of the Mississippi Workers' Compensation Commission to affirm the administrative law judge's (AJ) decision to deny an employee disability benefits because the AJ, acting under the authority of the Commission, was entitled to rely on his personal experience in making reasonable inferences and in his determination to deny benefits. Sterling v. Eaton Corp., 109 So. 3d 1096, 2013 Miss. App. LEXIS 130 (Miss. Ct. App. 2013).

In answering a certified question, the supreme court held that an award under Miss. Code Ann. § 71-3-47 referred to a final decision to grant or deny a specific amount of compensation. Thus, the employee's bad-faith claim against his employer was not time-barred as the administrative law judge's (ALJ) order had not yet determined the amount of compensation due; the order indicated that a final determination on the amount of compensation due the employee remained pending before the ALJ. Because the employee had substantial rights that remained undetermined and were specifically reserved for later action, the order was interlocutory, and the statute of limitations did not commence at that time. Bullock v. AIU Ins. Co., 995 So. 2d 717, 2008 Miss. LEXIS 595 (Miss. 2008).

No procedural invalidity existed where a commissioner wrote the factual summary for the administrative law judge as the judge wrote the fact-findings and legal conclusions, and the commissioner who wrote the summary recused herself from the appeal. Kitchens v. Jerry Vowell Logging, 874 So. 2d 456, 2004 Miss. App. LEXIS 486 (Miss. Ct. App. 2004).

An administrative law judge, as affirmed by the Workers' Compensation Commission and the circuit court, erred as a matter of law when he specifically stated that a hearing on an injured employee's motion to consider the need for additional medical treatment at the employer's expense under General Rule 9 was limited to whether the employee was suffering from improper medical treatment or lack of medical treatment, and then proceeded to make findings on maximum medical recovery and apportionment; an administrative law judge may not announce a limited purpose of a hearing, require the litigants to argue under limitation, and then decide the whole of the case including the time of maximum recovery apportionment and compensation. Monroe v. Broadwater Beach Hotel, 593 So. 2d 26, 1992 Miss. LEXIS 11 (Miss. 1992).

While the Administrative Judge is generally, within the Workers' Compensation Commission, the individual who conducts the hearing and hears the live testimony, the Commission itself is, in law, the finder of the facts, and on judicial review, the Commission's findings and decisions are subject to the normal deferential standards, notwithstanding the Administrative Judge's actions. Walker Mfg. Co. v. Cantrell, 577 So. 2d 1243, 1991 Miss. LEXIS 190 (Miss. 1991).

Injured worker's action for bad faith in payment of workers' compensation benefits may not proceed in federal court prior to final adjudication of underlying claim in accordance with state administrative procedures. Butler v. Nationwide Mut. Ins. Co., 712 F. Supp. 528, 1989 U.S. Dist. LEXIS 6132 (S.D. Miss. 1989).

Decision that claimant is entitled to compensation for temporary disability is not res judicata on issue of continuing disability. International Paper Co. v. Wilson, 243 Miss. 659, 139 So. 2d 644, 1962 Miss. LEXIS 391 (Miss. 1962).

Code 1942, §§ 6998-24 and 6998-28 do not require formal procedure or formal orders, and failure to accompany an order with a finding of fact is not fatal to its validity. Rivers Constr. Co. v. Dubose, 241 Miss. 527, 130 So. 2d 865, 1961 Miss. LEXIS 371 (Miss. 1961).

2. Jurisdiction of commission.

Administrative law judge did not err in dismissing an employee's workers' compensation claim due to the employee's failure to move for reinstatement within one year under Miss. Code Ann. § 71-3-47; under § 71-3-47, the Mississippi Workers' Compensation Commission could establish the "practice and procedure" for the "adjudication of all claims." Edwards v. Wal-Mart, 930 So. 2d 1273, 2006 Miss. App. LEXIS 271 (Miss. Ct. App. 2006).

Claim of entitlement to worker's compensation benefits is matter within exclusive original jurisdiction of Mississippi Workers' Compensation Commission, and until petition before Commission is ruled upon, claimant's entitlement to tort damages cannot be determined by federal or state court. Dial v. Hartford Acci. & Indem. Co., 863 F.2d 15, 1989 U.S. App. LEXIS 191 (5th Cir. Miss. 1989).

Jurisdiction was vested in the Workmen's Compensation Commission upon the claimant's filing her original two motions to contravert, and jurisdiction remained vested in the commission throughout the hearings conducted by an administrative judge and through the time when he issued his order, since jurisdiction of workmen's compensation claims is vested totally completely and exclusively in the commission and such jurisdiction cannot pass back and forth from the commission to an administrative judge inasmuch as an administrative judge is merely a facility of the commission. Day-Brite Lighting Div., Emerson Electric Co. v. Cummings, 419 So. 2d 211, 1982 Miss. LEXIS 2140 (Miss. 1982).

The commission has full power and authority to determine all questions relating to claims for compensation, including the authority to make such investigations as it deems necessary; it has specific authority to order medical examinations; and comprehensive judicial review of the commission's action is provided for. Everitt v. Lovitt, 192 So. 2d 422, 1966 Miss. LEXIS 1257 (Miss. 1966).

The workmen's compensation commission is without jurisdiction to order the reformation of an insurance policy with a view to bringing a claimant within its coverage. Herrin v. Alan Wetzel Lumber Co., 244 Miss. 673, 145 So. 2d 690, 1962 Miss. LEXIS 494 (Miss. 1962).

Where the fact of injury was sharply disputed and the evidence going thereto was in conflict, the issue was one for the commission. Davis v. Clark-Burt Roofing Co., 238 Miss. 464, 119 So. 2d 926, 1960 Miss. LEXIS 429 (Miss. 1960).

The commission is the trier of the facts and had the right, and was under a duty, to evaluate the testimony of lay and medical witnesses and to base its findings upon the evidence as a whole. Mississippi Products, Inc. v. Skipworth, 238 Miss. 312, 118 So. 2d 345, 1960 Miss. LEXIS 407 (Miss. 1960).

Reopening of case to hearing of further evidence is within the commission's discretion. Druey v. Ingalls Shipbuilding Corp., 237 Miss. 277, 114 So. 2d 772, 1959 Miss. LEXIS 465 (Miss. 1959).

Where the compensation carrier of a prime contractor had erroneously paid certain compensation payments to an injured employee of the subcontracting partnership, the commission, upon determining that the partnership, together with the compensation carrier of one of the members of the partnership, were liable for such benefits, erred in directing the partner's carrier to make duplicate compensation and medical expense payments to the employee; but correctly determined that it had no power to direct the partner's carrier to reimburse the prime contractor's carrier for payments erroneously made. United States Fidelity & Guaranty Co. v. Collins, 231 Miss. 319, 95 So. 2d 456, 1957 Miss. LEXIS 516, 1957 Miss. LEXIS 517 (Miss. 1957).

Where a claimant failed to appear at a commission hearing, after being given due notice, and the commission entered an order five days thereafter suspending the claimant's compensation payments, the workmen's compensation commission did not err in considering claimant's motion to reopen, filed within seven days after the entry of the order suspending payment but more than seven days after the date set for the hearing, since the commission could construe the motion as being timely and not inconsistent with a commission rule providing that if a justifiable excuse is presented for failure to attend the scheduled hearing within seven days after the date set therefor, a motion to reopen would be heard at the commission's discretion. Walker v. International Paper Co., 230 Miss. 95, 92 So. 2d 445, 1957 Miss. LEXIS 349 (Miss. 1957).

Adoption as correct of the facts stated by the attorney-referee in his opinion and findings did not preclude the workmen's compensation commission from considering the facts stated by the attorney-referee, as well as other facts appearing in evidence and from the record as a whole, in determining whether or not there was a causal connection between the claimant's heart attacks and his work, and from determining, under conflicting evidence, that the claimant's injury was compensable, contra to the attorney-referee's findings. Ingalls Shipbuilding Corp. v. Dickerson, 230 Miss. 110, 92 So. 2d 354, 1957 Miss. LEXIS 350 (Miss. 1957).

The workmen's compensation commission is the trier of facts in a workmen's compensation proceeding; not the attorney-referee. Malley v. Over The Top, Inc., 229 Miss. 347, 90 So. 2d 678, 1956 Miss. LEXIS 614 (Miss. 1956); Ingalls Shipbuilding Corp. v. Dickerson, 230 Miss. 110, 92 So. 2d 354, 1957 Miss. LEXIS 350 (Miss. 1957); Pascagoula Crab Co. v. Holbrooks, 230 Miss. 833, 94 So. 2d 233, 1957 Miss. LEXIS 429 (Miss. 1957); Valley Dry Goods Co. v. Odom, 244 Miss. 125, 141 So. 2d 254, 1962 Miss. LEXIS 431 (Miss. 1962).

3. Attorney-referee.

The findings of the attorney-referee are not analogous to the findings of a master in chancery. Dependents of Moon v. Erwin Mills, Inc., 244 Miss. 573, 145 So. 2d 465, 1962 Miss. LEXIS 478 (Miss. 1962).

Decision of full commission denying compensation must be sustained where supported by substantial evidence, although contrary determination by attorney-referee is also supported by substantial evidence. United Funeral Homes, Inc. v. Culliver, 240 Miss. 878, 128 So. 2d 579, 1961 Miss. LEXIS 519 (Miss. 1961).

The attorney-referee is an arm or facility of the commission to find the facts. Komp Equipment Co. v. Clinton, 236 Miss. 560, 112 So. 2d 541, 1959 Miss. LEXIS 351 (Miss. 1959).

A conflict in medical testimony, as to whether an accidental burn suffered by the claimant while engaged in his duties, together with the resultant anticipated treatment thereof, was causally related to and precipitated the claimant's heart attack, only made an issue of fact to be decided by the attorney-referee and the commission. Harper Foundry & Machine Co. v. Harper, 232 Miss. 873, 100 So. 2d 779, 1958 Miss. LEXIS 342 (Miss. 1958).

The attorney-referee did not err in closing the hearing upon motion, where the claimant had failed to appear at a date set for a recessed hearing, in the absence of claimant's showing that witnesses he desired had been subpoenaed or could be produced as witnesses, or that any effort had been made to produce them, and there was no showing made as to what such witnesses would testify, if present. Thompson v. Armstrong Cork Co., 230 Miss. 730, 93 So. 2d 831, 1957 Miss. LEXIS 415 (Miss. 1957).

The attorney-referee is no more than a facility for conducting the business of the commission, and for all practical purposes the commission is the actual trier of facts. Railway Express Agency, Inc. v. Hollingsworth, 221 Miss. 688, 75 So. 2d 639, 1954 Miss. LEXIS 580, 1954 Miss. LEXIS 581 (Miss. 1954).

4. Evidence, generally.

A death certificate listing cause of death as bronchio-alveolar carcinoma was prima facie proof of primary cause of Workers' Compensation claimant's death. Sonford Products Corp. v. Freels, 495 So. 2d 468, 1986 Miss. LEXIS 2658 (Miss. 1986), overruled, Bickham v. Department of Mental Health, 592 So. 2d 96, 1991 Miss. LEXIS 978 (Miss. 1991).

The Workers' Compensation Commission, within legal limits, is the sole judge of the weight and sufficiency of the evidence. Evidence which is not contradicted by positive testimony or circumstances, and which is not inherently improbable, incredible, or unreasonable, cannot, as a matter of law, be arbitrarily or capriciously discredited, disregarded or rejected, even though the witness is a party or is interested; unless uncontradicted evidence is shown to be untrustworthy, it is to be taken as conclusive and binding on the triers of fact. Morris v. Lansdell's Frame Co., 547 So. 2d 782, 1989 Miss. LEXIS 336 (Miss. 1989).

The statutes presuppose generally a full hearing on the merits and a claim should not be dismissed until all evidence pertinent to the issues has been heard, and where testimony of doctors was vital to claimant's case, the commission should not have arbitrarily dismissed claim without hearing this testimony. Day Detectives, Inc. v. Savell, 291 So. 2d 716, 1974 Miss. LEXIS 1740 (Miss. 1974).

The commission's finding will not be disturbed on appeal if supported by substantial evidence. Dependents of Moon v. Erwin Mills, Inc., 244 Miss. 573, 145 So. 2d 465, 1962 Miss. LEXIS 478 (Miss. 1962).

Unless denial of compensation is based on matters which are jurisdictional or in abatement, the compensation commission ordinarily should not grant a motion to dismiss where it has not heard all the pertinent evidence. Scott Builders, Inc. v. Dependent of Layton, 244 Miss. 641, 145 So. 2d 165, 1962 Miss. LEXIS 490 (Miss. 1962).

On a motion to dismiss a workmen's compensation proceeding on the pleadings and claimant's evidence, facts tendered by the claimant must be accepted as true and all reasonable inferences therefrom be resolved in claimant's favor. Scott Builders, Inc. v. Dependent of Layton, 244 Miss. 641, 145 So. 2d 165, 1962 Miss. LEXIS 490 (Miss. 1962).

Where the evidence as to whether employee was injured in accident arising out of and in course of his employment was conflicting, but the great weight of the evidence was against employee's contentions, the court would not disturb the finding by the commission that the employee was not injured in the course of employment. Shepard v. Paramount Theatre, 144 So. 2d 502 (Miss. 1962).

Since a claim for disability is separate and distinct from a claim for death benefits, the 1960 amendment to subsection (9) of Code 1942, § 6998-02, requiring that incapacity be proved by medical findings, did not eliminate from the application of the Workmen's Compensation Law of the presumption of causal connection between the employment and death occurring while the employee is engaged in the duties of his employment. L. B. Priester & Son, Inc. v. Bynum, 244 Miss. 185, 137 So. 2d 907, 1962 Miss. LEXIS 438 (Miss. 1962).

The evidence failed to establish claimant's claim that his hands were infected as a result of having stacked lumber which had been sprayed with a "chemical dip," and there was nothing in the record requiring reversal. Nelson v. Dickerson Sawmill, 140 So. 2d 567 (Miss. 1962).

Proof to establish a claim may be circumstantial. El Patio Motor Court, Inc. v. Dependents of Long, 242 Miss. 294, 134 So. 2d 437, 1961 Miss. LEXIS 558 (Miss. 1961), limited, Leake County Cooperative v. Dependents of Barrett, 226 So. 2d 608, 1969 Miss. LEXIS 1306, 1969 Miss. LEXIS 1307 (Miss. 1969).

Evidence which is uncontradicted or undisputed should ordinarily be taken as true, if it is not inherently improbable or unreasonable, and cannot be arbitrarily disregarded. Shivers v. Biloxi-Gulfport Daily Herald, 236 Miss. 303, 110 So. 2d 359, 1959 Miss. LEXIS 320 (Miss. 1959).

The commission is entitled to consider all evidence contained in the record before it, including statement given by claimant to insurance carrier. Ray v. Wells-Lamont Glove Factory, 236 Miss. 154, 109 So. 2d 544, 1959 Miss. LEXIS 304 (Miss. 1959).

Previous good health before injury and subsequent impairment of ability to work, indicates that injury was the cause of disability. Hale v. General Box Mfg. Co., 235 Miss. 301, 108 So. 2d 844, 1959 Miss. LEXIS 430 (Miss. 1959).

A back injury attributable to walking on crutches while recovering from a foot injury is properly excluded from consideration in awarding compensation, where it is not manifest that claimant's movements were part of the necessary treatment of the foot injury. Machine Products Co. v. Wilemon, 234 Miss. 596, 107 So. 2d 114, 1958 Miss. LEXIS 531 (Miss. 1958).

5. —Medical or expert testimony.

Employee's claim that her former employer acted in bad faith in denying workers' compensation benefits under Miss. Code Ann. § 71-3-7, which benefits the employee later received via a settlement, failed because the employer had arguable reasons for its decision where an investigation into whether the employee's alleged sexual relationship with her manager ever occurred or was cause of the employee's mental health problems was inconclusive; that the employer failed to offer a medical expert under Miss. Code Ann. § 71-3-47 to refute the opinions of the employee's experts at the workers' compensation hearing was inconsequential because even without medical testimony, the employer's arguable reasons for denying the employee's claim were solid, and medical testimony would not have made this any less of a "he said, she said" dispute. Hood v. Sears Roebuck & Co., 532 F. Supp. 2d 795, 2005 U.S. Dist. LEXIS 46216 (S.D. Miss. 2005), aff'd, 247 Fed. Appx. 531, 2007 U.S. App. LEXIS 21978 (5th Cir. Miss. 2007).

Workers' Compensation Commission erred in holding that the claimant was not permanently disabled because the Commission improperly relied on the opinions of nontreating doctors, who had not examined the claimant in two years, and the opinion of a vocation rehabilitation consultant that stated there was the "possibility" that the claimant could perform sedentary jobs, which was speculative and not supported by the facts in evidence that showed the claimant's treating physician never stated that the claimant could perform sedentary jobs but rather he insisted that she was permanently disabled and rejected such jobs. Recovery in a compensation case must be based on probabilities, rather than predicated only upon a possibility, and the claimant was not required to go against her treating physician's medical advice and seek employment. Stewart v. Singing River Hosp. Sys., 928 So. 2d 176, 2005 Miss. App. LEXIS 535 (Miss. Ct. App. 2005), cert. denied, 929 So. 2d 923, 2006 Miss. LEXIS 242 (Miss. 2006).

A doctor's inability to pinpoint the exact physical cause of an employee's disability did not alone defeat the employee's claim for compensation, given the beneficent purpose of the Workers' Compensation Act, where there was uncontradicted testimony that the employee was injured while performing his job and that he was totally and permanently disabled. Trest v. B.C. Rogers Processors, Inc., 592 So. 2d 110, 1991 Miss. LEXIS 981 (Miss. 1991).

Certainty is not a requisite in deciding a workers' compensation case, but, rather, the reviewing court considers reasonable medical probabilities. In other words, medical findings sufficient to show a compensable disability are not required to be precise, complete and unequivocal. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250, 1991 Miss. LEXIS 763 (Miss. 1991).

Compensation may be allowed for disabling pain in the absence of positive medical testimony as to any physical cause whatever. When the patient complains of pain, the doctor usually takes the fact of pain for granted and the absence of physical findings to account for the pain will not necessarily bar compensation. In such cases, evidence of an accident followed by disabling pain and the absence of evidence as to the cause of the pain from objective medical findings may be sufficient as a basis for compensation, in the absence of circumstances tending to show malingering or indicating that the claimant's testimony as to pain is inherently improbable, incredible, unreasonable or untrustworthy. However, there is a great potential for abuse in claims which are based predominantly upon pain reported by the patient, particularly in circumstances where the patient's testimony or statement to the physician is the sole evidence of its continued presence. In these cases, it would be prudent to obtain additional medical evidence to either support or dispute the claim. Morris v. Lansdell's Frame Co., 547 So. 2d 782, 1989 Miss. LEXIS 336 (Miss. 1989).

Medical testimony is required only to support the fact of incapacity and the extent of such incapacity. Marshall Durbin, Inc. v. Hall, 490 So. 2d 877, 1986 Miss. LEXIS 2493 (Miss. 1986).

Disability determination must be supported by medical evidence. Delta Drilling Co. v. Cannette, 489 So. 2d 1378, 1986 Miss. LEXIS 2472 (Miss. 1986).

Worker's Compensation Commission's order would not be overturned because it allowed claimant to reopen case to present further medical evidence. Delta Drilling Co. v. Cannette, 489 So. 2d 1378, 1986 Miss. LEXIS 2472 (Miss. 1986).

In a case where it was alleged that exposure to toxic chemicals at his workplace precipitated claimant's lung cancer and ultimate death, a toxicologist qualified as an expert to give an opinion regarding the causal relationship between the decedent's workplace and his fatal condition, and his expert testimony provided a reasonable basis for concluding that exposure to chemicals at the workplace was a substantial factor in bringing about death of claimant. Sonford Products Corp. v. Freels, 495 So. 2d 468, 1986 Miss. LEXIS 2658 (Miss. 1986), overruled, Bickham v. Department of Mental Health, 592 So. 2d 96, 1991 Miss. LEXIS 978 (Miss. 1991).

Disability upon which workman's compensation may be based need not be proved by medical testimony as long as there is medical testimony which will support finding of disability. Hall of Mississippi, Inc. v. Green, 467 So. 2d 935, 1985 Miss. LEXIS 2031 (Miss. 1985).

In heart attack cases, where the claimant lives, no presumption of causal relation arises out of the fact that employee was engaged in his usual duties at his place of employment at the time of the onset of the attack; the claimant has the burden of proving that heart attack was causally related to his employment; and the evidence with respect to causal relation must include medical testimony supportive thereof. Day Detectives, Inc. v. Savell, 291 So. 2d 716, 1974 Miss. LEXIS 1740 (Miss. 1974).

Where there was no substantial disagreement in the testimony of medical witnesses, commission was warranted in concluding that since the employee, whose death was caused by coronary occlusion, collapsed before he had begun the duties of his employment on morning in question and that he had had three days of rest and relaxation immediately prior thereto, that there was no causal relation between his activities as an employee and his death. Itawamba Mfg. Co. v. Dependents of Christian, 244 Miss. 587, 145 So. 2d 161, 1962 Miss. LEXIS 481 (Miss. 1962).

Medical and other evidence concerning the extent of the injuries has no bearing on the issue as to whether employee's injury arose out of and in the course of his employment. Shepard v. Paramount Theatre, 144 So. 2d 502 (Miss. 1962).

Evidence of lay witnesses as to the extent of disability supported award, notwithstanding medical evidence of less disability. McManus v. Southern United Ice Co., 243 Miss. 576, 138 So. 2d 899, 1962 Miss. LEXIS 378 (Miss. 1962).

The commission gives great weight to medical evidence in determining loss of wage-earning capacity, but is not conclusively bound thereby. The extent of such loss must be ascertained from the evidence as a whole. Hale v. General Box Mfg. Co., 235 Miss. 301, 108 So. 2d 844, 1959 Miss. LEXIS 430 (Miss. 1959).

Medical testimony is not essential to establish prima facie the cause and effect of a claimed injury. Marley Constr. Co. v. Westbrook, 234 Miss. 710, 107 So. 2d 104, 1958 Miss. LEXIS 541 (Miss. 1958).

In all but simple cases medical causation must be established by expert testimony. Cole v. Superior Coach Corp., 234 Miss. 287, 106 So. 2d 71, 1958 Miss. LEXIS 488 (Miss. 1958).

A conflict in medical testimony, as to whether an accidental burn suffered by the claimant while engaged in his duties, together with the resultant anticipated treatment thereof, was causally related to and precipitated the claimant's heart attack, only made an issue of fact to be decided by the attorney-referee and the commission. Harper Foundry & Machine Co. v. Harper, 232 Miss. 873, 100 So. 2d 779, 1958 Miss. LEXIS 342 (Miss. 1958).

Commission, on review following the decision of the attorney-referee, did not err in refusing to admit in evidence the deposition of one of the doctors who had testified before the attorney-referee, expressing the doctor's opinion that he was more of an expert on cancer than another doctor who had likewise testified at the hearing. Dixie Pine Products Co. v. Dependents of Bryant, 228 Miss. 595, 89 So. 2d 589, 1956 Miss. LEXIS 551 (Miss. 1956).

6. —Sufficiency.

Claimant's appeal of the denial of workers' compensation benefits was properly dismissed by the Mississippi Workers' Compensation Commission because the appeal was filed outside of the 20 days allowed by Miss. Code Ann. § 71-3-47 and because the claimant's reasons for her tardiness including a family emergency were insufficient. Roberson v. LFI Fort Pierce, Inc., 3 So. 3d 788, 2008 Miss. App. LEXIS 568 (Miss. Ct. App. 2008), cert. denied, 11 So. 3d 1250, 2009 Miss. LEXIS 99 (Miss. 2009).

Employee proved by preponderance of evidence that his employer did not carry workers' compensation, as required for every employer with five or more employees. James M. Burns Lumber Co. v. Dilworth, 676 So. 2d 892, 1996 Miss. LEXIS 297 (Miss. 1996).

A finding by the Workers' Compensation Commission that an injured manual laborer who was restricted by his doctor to lifting less than 40 pounds suffered only minimal industrial incapacity was not supported by substantial evidence where the decision was based largely on an alleged policy of the employer requiring workers to seek assistance when lifting more than 40 pounds, but the record contained no evidence of such a policy. DeLaughter v. South Cent. Tractor Parts, 642 So. 2d 375, 1994 Miss. LEXIS 367 (Miss. 1994).

The Workers' Compensation Commission's denial of benefits to an asthmatic employee would be reversed, even though a physician testified that there was not a "strong work-related causal connection between [the employee's] pneumonia and emphysema," where medical testimony established a causal connection between the exacerbation of her pre-existing respiratory problems and the inhalation of irritants in her work environment, and the employee's uncontroverted testimony of the onset pain in her side and back along with shortness of breath while she was performing her job duties established that her injury arose out of and in the course of her employment. Hedge v. Leggett & Platt, 641 So. 2d 9, 1994 Miss. LEXIS 362 (Miss. 1994).

A finding by the Workers' Compensation Commission that a lumberyard worker had sustained only a 50 percent loss of wage-earning capacity, and therefore suffered only partial rather than total permanent disability, would be reversed where the evidence indicated that he had difficulty performing "make-work" tasks at his employer's lumberyard after he returned to work and that his efforts to find other employment were unsuccessful, and the Commission's finding was based on the conclusion that the employee should have been able to secure "some type of gainful employment" merely because he had a high school education. Barnes v. Jones Lumber Co., 637 So. 2d 867, 1994 Miss. LEXIS 282 (Miss. 1994).

The circuit court did not err in reversing the Workers' Compensation Commission's finding that a claimant with a back injury had reached maximum medical improvement and suffered no permanent disability where there was evidence that the claimant had 2 ruptured discs surgically removed, specialists who initially concluded that the claimant had no ruptured discs did not later examine him after the discovery of the ruptured discs was made, and the employer failed to show that the claimant suffered any disassociated intervening injury which caused the ruptured discs, their surgical removal and the resulting disability. Marshall Durbin Cos. v. Warren, 633 So. 2d 1006, 1994 Miss. LEXIS 33 (Miss. 1994).

Substantial evidence supported finding by Worker's Compensation Commission that claimant's finger injury for which he had earlier been compensated was not a latent injury, and that a claim for further benefits was barred by statute of limitations. Benoist Elevator Co. v. Mitchell, 485 So. 2d 1068, 1986 Miss. LEXIS 2771 (Miss. 1986).

It is the finding of the commission, not that of the attorney-referee, to which the test of substantial evidence is applied. Johnson v. Pearl River Sand & Gravel Co., 242 Miss. 349, 134 So. 2d 434, 1961 Miss. LEXIS 566 (Miss. 1961).

Findings of the commission, either in allowing or denying compensation, must be supported by substantial evidence. Rivers Constr. Co. v. Dubose, 241 Miss. 527, 130 So. 2d 865, 1961 Miss. LEXIS 371 (Miss. 1961).

The commission's determination is conclusive if supported by substantial evidence. Parker v. United Gas Corp., 240 Miss. 351, 127 So. 2d 438, 1961 Miss. LEXIS 468 (Miss. 1961).

7. — —Established.

The evidence was sufficient to support the Workers' Compensation Commission's finding that a claimant's hypertension was work-related, thus obliging the claimant's former employer to pay for medical expenses incurred by the claimant for periodic checkups for his hypertensive condition as ordered by his treating physician, where the claimant began to experience tension, anxiety and stomach problems, which the physician diagnosed as hypertension, during the time the claimant worked for the employer, and the physician concluded that the claimant's job caused him to experience significant stress which aggravated his hypertensive condition so as to require him to take a medical leave of absence. Berry v. Universal Mfg. Co., 597 So. 2d 623, 1992 Miss. LEXIS 151 (Miss. 1992).

The evidence was sufficient to support the Workers' Compensation Commission's finding that an employee's mental disability was caused by a deliberate course of conduct by his employer and that there was nothing in his psychological background to suggest a pre-existing personality disorder, so that the stresses to which the employee was subjected were "more than the ordinary incidents of employment" and were "untoward events or unusual occurrences" culminating in his subsequent disability, where a psychiatrist who treated the employee for over 2 years testified that the employee was psychologically disabled and that his work played a significant part in causing it, and testimony from the employee, the employee's wife, and fellow employees established a protracted pattern by the employer to put pressure and stress upon the employee. Borden, Inc. v. Eskridge, 604 So. 2d 1071, 1991 Miss. LEXIS 795 (Miss. 1991).

The evidence was sufficient to support a finding by the Workers' Compensation Commission that noise at an employee's work site was a contributing, precipitating, or aggravating factor in the production of Meniere's Syndrome, even though the etiology of Meniere's Syndrome is largely unknown, where there was substantial evidence that exposure to high intensity noise for a period of years at the work site contributed to, aggravated or accelerated the employee's condition, and this evidence was not controverted by any direct medical evidence. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250, 1991 Miss. LEXIS 763 (Miss. 1991).

There was substantial evidence supporting a finding by the Workers' Compensation Commission that a claimant's impairment was a whole body injury rather than a schedule numbered injury only, where a physician identified the claimant's malady as Meniere's Syndrome, and he testified that Meniere's Syndrome is "an inner ear dysfunction that appears to be lifelong in nature" and that it affected the entire body in that, in addition to a loss of hearing, it involved a balance dysfunction affecting the claimant's activities of daily living, both occupationally and socially. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250, 1991 Miss. LEXIS 763 (Miss. 1991).

The evidence supported a finding that an employee suffered a 100 percent industrial loss of use of his left leg, rather than only a 40 percent loss, even though the employee's treating physician testified that the employee had a 40 percent permanent partial impairment of his left leg, where the physician also testified that the employee would be limited in activities such as standing for long periods, climbing ladders and stairs, and carrying heavy loads but that he could work in sedentary types of positions where he could sit to do the work, the employee was a 43-year-old man who dropped out of school during the 10th grade, from that time until the time of his injury he worked in construction, did carpentry work, and delivered furniture, at the time of the injury he was employed at a furniture company where he did not perform any one particular job but was moved around from job to job as needed, some of the jobs that he performed at the company included working in the sanding department, cutting out chest-of-drawer tops, and working in the mill, the employee testified that after his injury he could not do carpentry work and could not do any jobs which required him to stand but he could sand edges and use a table saw, and he testified that he continued to have problems with his leg every day, including swelling and pain. McGowan v. Orleans Furniture, Inc., 586 So. 2d 163, 1991 Miss. LEXIS 596 (Miss. 1991).

The evidence was sufficient to support a finding of July 8, 1988, as the date of an employee's maximum medical recovery from a leg injury, where the employee's treating physician had initially indicated that the employee had reached maximum medical recovery on August 27, 1987 when he was originally released to return to work, but the physician subsequently stated that the employee did not reach maximum medical recovery until July 8, 1988 because the employee continued to suffer from swelling and pain following the August release and the physician continued reassessment and treatment in the hope that the employee's condition would improve. McGowan v. Orleans Furniture, Inc., 586 So. 2d 163, 1991 Miss. LEXIS 596 (Miss. 1991).

The Workers' Compensation Commission's findings that a truck driver sustained a compensable injury and that the repeated trauma of his work aggravated a pre-existing non-work-related condition were supported by substantial evidence where the worker's treating physician and the physician for the employer who conducted a physical examination required by the Department of Transportation had released the worker to return to work following treatment for a non-work-related back injury and the treating physician testified that the worker had a "chronically sore joint in the back that was apparently being aggravated by the nature of his work as a long-distance truck driver." Miller Transporters, Inc. v. Guthrie, 554 So. 2d 917, 1989 Miss. LEXIS 495 (Miss. 1989).

In a case where it was alleged that exposure to toxic chemicals at his workplace caused claimant's lung cancer and ultimate death, a prima facie case of compensability was established by toxicologist's testimony that within a 90-95 percent probability, bronchio-alveolar carcinoma, is caused by exposure to chemicals; death certificate listing claimant's cause of death as bronchio-alveolar carcinoma; lay testimony of claimant establishing his daily exposure to chemicals, a weight loss, shortness of breath, and operation for removal of lung lesions; and lay testimony of claimant's wife as to the absorption of chemicals on claimant's clothes, on the onset of symptoms described by claimant, and his ultimate death. Sonford Products Corp. v. Freels, 495 So. 2d 468, 1986 Miss. LEXIS 2658 (Miss. 1986), overruled, Bickham v. Department of Mental Health, 592 So. 2d 96, 1991 Miss. LEXIS 978 (Miss. 1991).

Worker's Compensation Commission's findings that employee suffered permanent, total occupational disability and that apportionment was not required because of employee's pre-existing condition, was amply supported by employee's testimony and by medical evidence. Marshall Durbin, Inc. v. Hall, 490 So. 2d 877, 1986 Miss. LEXIS 2493 (Miss. 1986).

Worker's Compensation Commission's finding that claimant had suffered a work-related injury, and was occupationally disabled as a result thereof, was sustained by medical and lay evidence. Delta Drilling Co. v. Cannette, 489 So. 2d 1378, 1986 Miss. LEXIS 2472 (Miss. 1986).

Testimony of 2 physicians as to their examination of claimant provided substantial evidence needed to support Worker's Compensation Commission's denial of claimant's motion to remand her case to administrative law judge for consideration of additional benefits. Georgia-Pacific Corp. v. Veal, 484 So. 2d 1025, 1986 Miss. LEXIS 2411 (Miss. 1986).

Medical testimony that workman's compensation claimant has suffered 15 percent permanent anatomical disability, combined with testimony of claimant and corroborating witnesses that claimant is unable to perform any task involving physical exertion and that claimant is plagued by pain is sufficient to establish claimant's disability. Hall of Mississippi, Inc. v. Green, 467 So. 2d 935, 1985 Miss. LEXIS 2031 (Miss. 1985).

Testimony of workmen's compensation claimant as to inability to perform job, as to continuing suffering and pain and limitations on mobility and as to inability to find other work is sufficient to support finding of 100 percent industrial disability, notwithstanding testimony of treating physician that claimant has suffered 20 percent partial disability. Piggly Wiggly v. Houston, 464 So. 2d 510, 1985 Miss. LEXIS 1921 (Miss. 1985).

The commission should not dismiss a claim at the close of the claimant's evidence, where the case is a close one and all the facts have not been developed. Scott Builders, Inc. v. Dependent of Layton, 244 Miss. 641, 145 So. 2d 165, 1962 Miss. LEXIS 490 (Miss. 1962).

Commission's finding, that heart attack sustained by a radio station employee faced with increasing competition was not connected with his employment, held sustained by substantial evidence. Capital Broadcasting Co. v. Wilkerson, 240 Miss. 64, 126 So. 2d 242, 1961 Miss. LEXIS 430 (Miss. 1961).

Conflicting evidence sustained decision of the commission denying benefits to a night watchman who claimed that he had sustained a fall and injury which resulted in varicose veins in his left leg. Tanner v.

American Hardware Corp., 238 Miss. 612, 119 So. 2d 380, 1960 Miss. LEXIS 445 (Miss. 1960).

Medical evidence, and testimony of claimant and that of her two coemployees, supported commission's finding that claimant was temporarily totally disabled at the time of a hearing, and that her disability was due to a new back injury which aggravated the prior existing physical impairment. Fair Stores v. Bryant, 238 Miss. 434, 118 So. 2d 295, 1960 Miss. LEXIS 424 (Miss. 1960).

Workmen's compensation commission's finding that there was no causal connection between claimant's disability and the injury which occurred in the course of her employment was supported by substantial evidence, including physicians' testimony fairly demonstrating that neither the injury nor the operation was the probable cause of the disabling pain and further showing that a preexisting disease, revealed by a pelvic examination, was the probable cause of the pain. Malley v. Over The Top, Inc., 229 Miss. 347, 90 So. 2d 678, 1956 Miss. LEXIS 614 (Miss. 1956).

In an action under Workmen's Compensation Law to recover death benefits for a member of a drilling crew whose body was found near the ditch he had been digging, evidence that decedent had complained of pains in chest while moving heavy planks prior to digging a ditch was sufficient to sustain a finding that death resulted from accidental injury arising out of and in the course of employment, despite the fact that there was medical testimony that decedent died of a heart attack. Sunnyland Contracting Co. v. Davis, 221 Miss. 744, 74 So. 2d 858, 1954 Miss. LEXIS 587 (Miss.), modified, 221 Miss. 744, 75 So. 2d 923, 1954 Miss. LEXIS 589 (Miss. 1954).

8. — —Not established.

The evidence was sufficient to support a finding that a claimant suffered only a 5 percent permanent partial occupational disability by reason of a work-connected injury to his left hand, where the claimant failed to offer evidence that he had unsuccessfully attempted to perform his usual duties, and he failed to offer evidence that he was refused employment based upon the disability to his hand in that he made no search for work outside his prior employment, stating that his car had been repossessed and he was without transportation. Walker Mfg. Co. v. Cantrell, 577 So. 2d 1243, 1991 Miss. LEXIS 190 (Miss. 1991).

A claimant who suffered a 25 percent permanent impairment to the body was not entitled to an award of permanent partial disability benefits since she did not establish a loss of wage earning capacity attributable to the compensable injury, where the evidence showed that she experienced an overall increase of post-injury wages and she offered no proof to rebut the presumption of no loss of wage earning capacity by showing that the post-injury earnings were not reliable in determining wage earning capacity. International Paper Co. v. Kelley, 562 So. 2d 1298, 1990 Miss. LEXIS 274 (Miss. 1990).

Decision of Workmen's Compensation Commission awarding benefits on basis of alleged back injury will be reversed on judicial review on basis of lack of sufficient evidence where only testimony regarding injury is that of claimant and those claimant informed, initial medical consultation for injury is almost full year after injury, and claimant's conduct after injury is so inconsistent with that of employee injured in course of employment as to cause loss of credibility. Hudson v. Keystone Seneca Wire Cloth Co., 482 So. 2d 226, 1986 Miss. LEXIS 2334 (Miss. 1986).

A showing of mere possibility that death from heart trouble, after termination of employment, is connected with the employment, is not sufficient. Franks v. Goyer Co., 234 Miss. 833, 108 So. 2d 217, 1959 Miss. LEXIS 557 (Miss. 1959).

9. —Conflicting testimony.

A finding that a claimant was not entitled to permanent disability benefits because his disability, which arose from slippage in the spine, was attributable entirely to preexisting spondylolisthesis was not supported by substantial evidence where there was conflicting medical testimony from 2 treating physicians as to the cause of the claimant's permanent disability and neither physician could determine how and when the slippage actually occurred, since close questions of compensability should be resolved in favor of the claimant, and the Workers' Compensation Act should be liberally construed to carry out its remedial purpose. McNeese v. Cooper Tire & Rubber Co., 627 So. 2d 321, 1993 Miss. LEXIS 444 (Miss. 1993).

Even if medical testimony was in conflict, the findings of the workmen's compensation commission, that the permanent total disability of an employee who had sustained a heart attack had no causal connection with his work, was supported by substantial evidence. Babcock & Wilcox Co. v. Roby, 246 Miss. 160, 150 So. 2d 129, 1963 Miss. LEXIS 431 (Miss. 1963).

Although the testimony was conflicting, there was substantial evidence to sustain finding of workmen's compensation commission against claimant's contention that her injuries had been sustained while on the job. Duck v. Liberty Mills, Inc., 246 Miss. 434, 149 So. 2d 849, 1963 Miss. LEXIS 460 (Miss. 1963).

Commission finding that the father and two minor brothers were totally dependent upon the deceased employee at the time of his death was supported by evidence showing that the deceased employee had furnished money and supplies for the support of his two minor brothers and of his father who was in poor health and had not been gainfully employed during the two years next prior to the father's death. Truck Trailer Sales & Service Co. v. Moore, 244 Miss. 317, 141 So. 2d 541, 1962 Miss. LEXIS 451 (Miss. 1962).

Where the claimant lost no time from work following time of alleged injury for a period of nearly two months, medical and lay testimony, although conflicting, sustained commission's denial of benefits for an alleged ruptured intervertebral disc causing disablement. Allen v. Westinghouse Electric Co., 118 So. 2d 869 (Miss. 1960).

Although conflicting, lay and medical testimony supported finding of commission that claimant's anxiety neurosis did not result from accidental injury and trial court erred in setting aside the findings and award of the commission. Mississippi Products, Inc. v. Skipworth, 238 Miss. 312, 118 So. 2d 345, 1960 Miss. LEXIS 407 (Miss. 1960).

10. Burden of proof.

A circuit court judgment affirming the Workers' Compensation Commission's denial of benefits to a deceased employee's children was not supported by substantial evidence and would be reversed where the onset of the employee's death occurred at her place of employment and the employer failed to rebut the presumption that the employee's work activities did not cause or contribute to the condition from which she died; the unrebutted "found dead" legal presumption prevailed, satisfying the causal connection between the employee's work duties and the condition which resulted in her death. Nettles v. Gulf City Fisheries, 629 So. 2d 554, 1993 Miss. LEXIS 545 (Miss. 1993).

When a claimant, having reached maximum medical recovery, reports back to his or her employer for work, and the employer refuses to reinstate or rehire the claimant, then it is prima facie that the claimant has met his or her burden of showing total disability; the burden then shifts to the employer to prove a partial disability or that the claimant has suffered no loss of wage earning capacity. Jordan v. Hercules, Inc., 600 So. 2d 179, 1992 Miss. LEXIS 224 (Miss. 1992), but see Dulaney v. National Pizza Co., 733 So. 2d 301, 1998 Miss. App. LEXIS 990 (Miss. Ct. App. 1998).

In order to establish industrial disability, the burden is upon the claimant to prove medical impairment and that the medical impairment resulted in a loss of wage-earning capacity. Robinson v. Packard Electric Div., General Motors Corp., 523 So. 2d 329, 1988 Miss. LEXIS 199 (Miss. 1988).

When a claimant seeks compensation benefits for disability resulting from a mental or psychological injury, the claimant has the burden of proving by clear and convincing evidence the connection between the employment and the injury. Fought v. Stuart C. Irby Co., 523 So. 2d 314, 1988 Miss. LEXIS 86 (Miss. 1988).

Since there is no statutory requirement as to a cross-appeal, the Commission is free to adopt whatever rule it deems feasible on cross-appeals by a party, and, having apparently promulgated none thus far, was clearly within its authority in considering the cross-appeal of a claimant, even though filed considerably more than 20 days following the decision of the administrative law judge. Staple Cotton Services Asso. v. Russell, 399 So. 2d 224, 1981 Miss. LEXIS 2019 (Miss. 1981).

In heart attack cases, where the claimant lives, no presumption of causal relation arises out of the fact that employee was engaged in his usual duties at his place of employment at the time of the onset of the attack; the claimant has the burden of proving that heart attack was causally related to his employment; and the evidence with respect to causal relation must include medical testimony supportive thereof. Day Detectives, Inc. v. Savell, 291 So. 2d 716, 1974 Miss. LEXIS 1740 (Miss. 1974).

While the burden of proof is on the claimant, there is created a rebuttable presumption of work connection in the case of an unexplained death while on the job. L. B. Priester & Son, Inc. v. Bynum, 244 Miss. 185, 137 So. 2d 907, 1962 Miss. LEXIS 438 (Miss. 1962).

The burden of establishing a claim is upon the employees. Valley Dry Goods Co. v. Odom, 244 Miss. 125, 141 So. 2d 254, 1962 Miss. LEXIS 431 (Miss. 1962).

The burden is on claimant to show a causal connection between an injury and the claimed disability. Potts v. Lowery, 242 Miss. 300, 134 So. 2d 474, 1961 Miss. LEXIS 559 (Miss. 1961).

The burden of proof is upon the claimant. Capital Broadcasting Co. v. Wilkerson, 240 Miss. 64, 126 So. 2d 242, 1961 Miss. LEXIS 430 (Miss. 1961).

When an employer's motor vehicle is being driven by an employee, it is presumed to be on the employer's business, and the burden is on the employer to prove that it was being driven on a route which the employee's duties did not require him to take. Wilson Furniture Co. v. Wilson, 237 Miss. 512, 115 So. 2d 141, 1959 Miss. LEXIS 498 (Miss. 1959).

Burden of proof is upon claimant to show causal connection between his work and his injury or death. Druey v. Ingalls Shipbuilding Corp., 237 Miss. 277, 114 So. 2d 772, 1959 Miss. LEXIS 465 (Miss. 1959).

Burden is on one claiming death benefits to prove that work of deceased employee contributed to his death. Winters Hardwood Dimension Co. v. Dependents of Harris, 236 Miss. 757, 112 So. 2d 227, 1959 Miss. LEXIS 373 (Miss. 1959).

The burden is on claimant to establish beyond speculation and conjecture an employer-employee relationship and that the injury or death arose out of and in the course of employment. Erwin v. Hayes, 236 Miss. 123, 109 So. 2d 156, 1959 Miss. LEXIS 301 (Miss. 1959).

Where an accident arising out of and in the course of the employment is shown, the burden is on the employer to prove that disability is due to some cause for which he is not responsible. Hale v. General Box Mfg. Co., 235 Miss. 301, 108 So. 2d 844, 1959 Miss. LEXIS 430 (Miss. 1959).

The burden of proof is on the claimant to show causal connection between the employment and injury. Sullivan v. C. & S. Poultry Co., 234 Miss. 126, 105 So. 2d 558, 1958 Miss. LEXIS 473 (Miss. 1958).

The employee has an overall burden of proving facts prerequisite to recovery in every case. T. H. Mastin & Co. v. Mangum, 215 Miss. 454, 61 So. 2d 298, 1952 Miss. LEXIS 585 (Miss. 1952).

11. Timeliness of petition.

Workers' Compensation Commission properly dismissed an employee's petition for review as untimely because the employee received the final order with sufficient time to file her petition for review by the 20-day deadline. Dildy v. McPeters Inc., 295 So. 3d 989, 2020 Miss. App. LEXIS 149 (Miss. Ct. App. 2020).

In a case in which the claimant appealed the denial of benefits to the Mississippi Workers' Compensation Commission, the Commission did not err in dismissing her appeal as untimely because the administrative judge denied her claim in an order entered on November 1, 2018, but she did not file her request for Commission review until November 28, 2018, which was at least one week beyond the 20-day window to file a request or petition for review by the full Commission; and the claimant cited no authority to support her position that excusable neglect could salvage her untimely claim to the Commission, and, notwithstanding, the claimant failed to show excusable neglect. Hardy v. Xanitos, Inc., 294 So. 3d 97, 2019 Miss. App. LEXIS 541 (Miss. Ct. App. 2019), cert. denied, 303 So. 3d 419, 2020 Miss. LEXIS 389 (Miss. 2020).

Case presented a set of unique facts under which the claimant's notice of appeal should be considered timely as the claimant's counsel withdrew on last day that she could have filed her notice of appeal, and the administrative judge clearly determined that fairness required an extension of time for the claimant to prosecute her claim. Felter v. Floorserv, Inc., 140 So. 3d 426, 2013 Miss. LEXIS 293 (Miss. 2013).

Denial of the employee's petition for his workers' compensation claim to be reinstated was appropriate because he failed to timely file a petition to reinstate with the Workers' Compensation Commission and the actions taken during the statute-of-limitations period were insufficient to toll the one-year period. Cook v. Home Depot & Am. Home Assur. Co., 81 So. 3d 1126, 2011 Miss. App. LEXIS 18 (Miss. Ct. App. 2011), aff'd, 81 So. 3d 1041, 2012 Miss. LEXIS 70 (Miss. 2012).

Employee's petition for review was properly dismissed by the Mississippi Workers' Compensation Commission as untimely under Miss. Code Ann. § 71-3-47 because the employee filed the petition 21 days after the initial decision. Employee admitted that she mailed the petition on the last day it should have been filed. Ford v. KLLM, Inc., 909 So. 2d 1194, 2005 Miss. App. LEXIS 73 (Miss. Ct. App. 2005).

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It is a well-recognized proposition of law that if petition for review is not filed within 20 days then action is barred since § 71-3-47 is jurisdictional; however a claimant's motion for the commission to withdraw attorney-referee's order denying his claim tolls running of 20-day time within which petition for review by full commission should be filed. Day Detectives, Inc. v. Savell, 291 So. 2d 716, 1974 Miss. LEXIS 1740 (Miss. 1974).

Where the petition for review was not filed within 20 days, the action is barred since this section [Code 1942, § 6998-24] is jurisdictional. Scales v. Barry, 195 So. 2d 920, 1967 Miss. LEXIS 1467 (Miss. 1967).

If, by the exclusion of the first day of the period in which a compensation claimant must file notice of appeal from decision of the workmen's compensation commission's representative, the last day of the computation falls on Sunday, then the first day is counted and the last day is excluded, and by following this formula where the compensation commission's office is open for business on Saturdays until noon, a petition for review could not have been timely filed later than the date of the Saturday preceding the Sunday which constituted the 20th day. Scales v. Barry, 195 So. 2d 920, 1967 Miss. LEXIS 1467 (Miss. 1967).

RESEARCH REFERENCES

Am. Jur.

82 Am. Jur. 2d, Workers' Compensation §§ 475 et seq.

CJS.

100 C.J.S., Workers' Compensation §§ 414 et seq.

Practice References.

Larson's Workers' Compensation Law (Matthew Bender).

§ 71-3-49. Enforcement of payment in default.

(1) In case of default by the employer in the payment of any compensation

due under an award for the period of thirty (30) days after payment is due and payable or, where the employer has failed to secure the payment of compensation to his employees as required, where there is such default in payment for a period of ten (10) days after same is due, any party in interest may file with the county clerk for the county in which the injury occurred or the county in which the employer has his principal place of business a certified copy of the decision of the commission awarding compensation or ending, diminishing or increasing compensation previously awarded, from which no appeal has been taken within the time allowed therefor or, if an appeal has been taken by an employer who has not complied with the provisions of Section 71-3-75, where he fails to deposit with the commission the amount of the award as security for its payment within ten (10) days after same is due and payable, and thereupon judgment must be entered in the circuit court by the clerk of such county in conformity therewith immediately upon the filing of such decision. If the payment in default be an installment, the commission may declare the entire award due and judgment may be entered in accordance with the provisions of this section. Such judgment shall be entered in the same manner, have the same effect, and be subject to the same proceedings as though rendered in a suit duly heard and determined by the circuit court, except that no appeal may be taken therefrom. The court shall vacate or modify such judgment to conform to any later award or decision of the commission upon presentation of a certified copy of such award or decision. The award may be so compromised by the commission as in its discretion may best serve the interest of the persons entitled to receive the compensation or benefits. Neither the commission nor any party in interest shall be required to pay any fee to any public officer for filing or recording any paper or instrument or for issuing a transcript of any judgment executed in pursuance of this section.

(2) In case of default by a self-insurer in payment of any compensation due under an award where the default is due to the insolvency of the self-insurer, the claimant may file a claim based on the award with the Mississippi Workers' Compensation Self-insurer Guaranty Association, pursuant to the rules and regulations of said association, as established and provided for in Sections 71-3-151 through 71-3-181.

HISTORY: Codes, 1942, § 6998-25; laws, 1948, ch. 354, § 19; reenacted without change, Laws, 1982, ch. 473, § 25; Laws, 1988, ch. 554, § 17; reenacted without change, Laws, 1990, ch. 405, § 26, eff from and after July 1, 1990.

JUDICIAL DECISIONS

1. In general.

Where a claimant, appealing from the decision of the workmen's compensation commission to the circuit court, successfully contended that he was entitled to recover the 20 per cent penalty as provided for in Code 1942, § 6998-19(f), but was unsuccessful as to his contention that the entire award should have been judged to be due and payable as provided in this section [Code 1942, § 6998-25], the court was authorized under Code 1942, § 1593, to apportion the cost between the parties. T. C. Fuller Plywood Co. v. Moffett, 231 Miss. 382, 95 So. 2d 475, 1957 Miss. LEXIS 523 (Miss. 1957).

RESEARCH REFERENCES

Am. Jur.
82 Am. Jur. 2d, Workmen's Compensation §§ 584 et seq.

CJS.
101 C.J.S., Workers' Compensation §§ 1474-1483.

§ 71-3-51. Court review of compensation award.

The final award of the commission shall be conclusive and binding unless either party to the controversy shall, within thirty (30) days from the date of its filing in the office of the commission and notification to the parties, appeal therefrom to the Supreme Court.

Such appeal may be taken by filing notice of appeal with the commission, whereupon the commission shall under its certificate transmit to the Supreme Court all documents and papers on file in the matter, together with a transcript of the evidence, the findings, and award, which shall thereupon become the record of the cause. Appeals shall be considered only upon the record as made before the commission. The Supreme Court shall always be deemed open for hearing of such appeals. The Supreme Court shall review all questions of law and of fact. If no prejudicial error be found, the matter shall be affirmed and remanded to the commission for enforcement. If prejudicial error be found, the same shall be reversed and the Supreme Court shall enter such judgment or award as the commission should have entered. An appeal from the commission to the Supreme Court shall not act as a supersedeas unless the court shall so direct, and then upon such terms as such court shall direct.

No controversy shall be heard by the commission or an award of compensation made therein while the same matter is pending either before a federal court or in any court in this state.

Any award of compensation made by the Supreme Court shall bear the same interest and penalties as do other judgments awarded in circuit court.

HISTORY: Codes, 1942, § 6998-26; Laws, 1948, ch. 354, § 20; Laws, 1950, ch. 412, § 10; reenacted without change, Laws, 1982, ch. 473, § 26; reenacted without change, Laws, 1990, ch. 405, § 27; Laws, 2011, ch. 389, § 1, eff from and after July 1, 2011.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Who may appeal.
3. Proceedings in Circuit Court.
4. —Preference cases.
5. — Judgments.
6. Reversal, vacation, or modification of commission's award, generally.
7. —Commission's findings upheld.
8. —Commission's findings reversed.
9. Particular injuries and circumstances; commission's findings upheld.
10. —Commission's findings reversed.
11. Damages.
12. Penalties.
13. Interest.

1. In general.

Appellate court had jurisdiction of a workers' compensation appeal despite an administrative judge's failure to decide an employer's motion to reconsider because (1) the Mississippi Workers' Compensation Commission's (Commission) ruling was reviewable under Miss. Code Ann. § 71-3-51, as the Commission had jurisdiction once a claim was filed, and (2) there were no more remedies to exhaust once the Commission ruled. Hamilton v. Southwire Co., 191 So. 3d 1275, 2016 Miss. App. LEXIS 264 (Miss. Ct. App. 2016).

Court of appeals erred in reversing an order granting an employer's motion for summary judgment in a widow's action alleging bad faith for failing to timely pay workers' compensation benefits because the Mississippi Workers' Compensation Commission's final judgment affirming an administrative law judge's order awarding the widow benefits marked the end of its involvement in the case, and since the widow's suit was filed more than three years later, it was time-barred under the general three-year statute of limitations, Miss. Code Ann. § 15-1-49; the plain language of Miss. Code Ann. § 71-3-51 provided that "the final award of the Commission shall be conclusive and binding unless either party shall appeal," and since no party appealed the Commission's decision, the "unless" qualifier was irrelevant, and according to the statute's very specific, unambiguous language, the Commission's award was "final" and "conclusive and binding." Harper v. Cal-Maine Foods, Inc., 43 So. 3d 401, 2010 Miss. LEXIS 307 (Miss. 2010).

Trial court erred in granting the employer's motion for summary judgment on the basis that the complaint was time-barred; under Miss. Code Ann. § 71-3-51, the Legislature intended to postpone the conclusiveness and finality of the order until expiration of the thirty days allowed for appeal, and the wife's claim was filed within three years of the judgment. Harper v. Cal-Maine Foods, Inc., 43 So. 3d 457, 2009 Miss. App. LEXIS 371 (Miss. Ct. App. 2009), rev'd, 43 So. 3d 401, 2010 Miss. LEXIS 307 (Miss. 2010).

Thirty-day period for appeal commenced on the date of the Workers' Compensation Commission order. Tinnon v. C. Hager & Sons Hinge Mfg. Co., 795 So. 2d 594, 2001 Miss. App. LEXIS 350 (Miss. Ct. App. 2001).

The court properly dismissed an appeal where the notice of appeal was not filed until 33 days after the Workers' Compensation Commission's order, notwithstanding that the appellant did not receive notice of the commission's order until she received it in the mail four days after it was issued. Triplett v. Farm Fresh Catfish Co., 737 So. 2d 438, 1999 Miss. App. LEXIS 135 (Miss. Ct. App. 1999).

Standard of review in workers' compensation cases is limited and substantial evidence test is used. Inman v. Coca-Cola/Dr. Pepper Bottling Co., 678 So. 2d 992, 1996 Miss. LEXIS 420 (Miss. 1996).

Workers' Compensation Commission is trier and finder of facts in compensation claim; Supreme Court will reverse Commission's order only if it finds that order clearly erroneous and contrary to overwhelming weight of evidence. Inman v. Coca-Cola/Dr. Pepper Bottling Co., 678 So. 2d 992, 1996 Miss. LEXIS 420 (Miss. 1996).

Substantial evidence supported finding by Workers' Compensation Commission that claimant's transfer to Memphis, Tennessee was permanent and, thus, Mississippi court did not have jurisdiction to determine his claim for workers' compensation benefits arising out of accident in Tennessee. Inman v. Coca-Cola/Dr. Pepper Bottling Co., 678 So. 2d 992, 1996 Miss. LEXIS 420 (Miss. 1996).

By statute, only final orders of the Workers' Compensation Commission are appealable. Blankenship v. Delta Pride Catfish, 676 So. 2d 914, 1996 Miss. LEXIS 319 (Miss. 1996).

Where Workers' Compensation Commission, on review of a decision of its hearing officer, enters order remanding case to administrative judge for further proceedings or testimony, the order is interlocutory only and is not appealable. Blankenship v. Delta Pride Catfish, 676 So. 2d 914, 1996 Miss. LEXIS 319 (Miss. 1996).

Order is interlocutory, and not appealable, when substantial rights of the parties involved in action remain undetermined and when cause is retained for further action. Blankenship v. Delta Pride Catfish, 676 So. 2d 914, 1996 Miss. LEXIS 319 (Miss. 1996).

Workers' Compensation Commission's order was final for purposes of appeal because it determined all matters among the parties and nothing had been retained by Commission or remanded to administrative law judge for further consideration. Blankenship v. Delta Pride Catfish, 676 So. 2d 914, 1996 Miss. LEXIS 319 (Miss. 1996).

Appeals from state administrative agency hearings are controlled by statute and will only be allowed after entry of a final order; thus, an appeal from a circuit court's order remanding the case to the Mississippi Employment Security Commission's Board of Review for a hearing de novo was not properly before the Supreme Court, since the order was interlocutory in nature. Wilson v. Mississippi Employment Sec. Comm'n, 643 So. 2d 538, 1994 Miss. LEXIS 568 (Miss. 1994).

There is no statute authorizing an appeal from anything other than a final order of the Workers' Compensation Commission, and therefore a circuit court may not grant an appeal from an interlocutory order of the Commission. Thus, judgments of circuit courts emanating from appeals from interlocutory orders of the Commission were nullities. Bickham v. Department of Mental Health, 592 So. 2d 96, 1991 Miss. LEXIS 978 (Miss. 1991).

While the Administrative Judge is generally, within the Workers' Compensation Commission, the individual who conducts the hearing and hears the live testimony, the Commission itself is, in law, the finder of the facts, and on judicial review, the Commission's findings and decisions are subject to the normal deferential standards, notwithstanding the Administrative Judge's actions. Walker Mfg. Co. v. Cantrell, 577 So. 2d 1243, 1991 Miss. LEXIS 190 (Miss. 1991).

If a decision of the Workers' Compensation Commission is based on substantial evidence, the circuit court and the Supreme Court are bound by the finding of fact made by the Commission. International Paper Co. v. Kelley, 562 So. 2d 1298, 1990 Miss. LEXIS 274 (Miss. 1990).

The review of the decisions of the Workers' Compensation Commission is like the review of any other administrative body which sits as a trier of fact. If the decision of the Commission is based upon substantial evidence and there is no error of law, the decision will be affirmed on appeal. Thus, if there is a quantum of credible evidence which supports the decision of the Commission, no court will reverse the decision. The Supreme Court will not determine where the preponderance of the evidence lies when the evidence is conflicting, the assumption being that the Commission, as the trier of facts, has previously determined which evidence is credible and which is not. This is not to say that the reviewing court will merely "rubber stamp" the Commission's actions; where no evidence or only a scintilla of evidence supports a Workers' Compensation Commission decision, the Supreme Court would not hesitate to reverse. Metal Trims Industries, Inc. v. Stovall, 562 So. 2d 1293, 1990 Miss. LEXIS 277 (Miss. 1990).

In order to preserve point for review by Supreme Court, point must be presented not only to Workers' Compensation Commission but also to Circuit Court by assignment of error there; failing to do so results in waiver of issue. Sawyer v. Head, 510 So. 2d 472, 1987 Miss. LEXIS 2427 (Miss. 1987).

An appeal from Workers' Compensation Commission interlocutory order was granted by Supreme Court to avoid expense and delay. Sonford Products Corp. v. Freels, 495 So. 2d 468, 1986 Miss. LEXIS 2658 (Miss. 1986), overruled, Bickham v. Department of Mental Health, 592 So. 2d 96, 1991 Miss. LEXIS 978 (Miss. 1991).

Principal of liberal construction in favor of award of benefits to workmen's compensation claimant does not allow court reviewing denial of claim to bridge gaps in failure of medical testimony or to find causal connections to employment where none exists. Olen Burrage Trucking Co. v. Chandler, 475 So. 2d 437, 1985 Miss. LEXIS 2212 (Miss. 1985).

Under § 71-3-51, the appellate court had the duty to review the facts contained in the record and to determine whether or not those facts substantiated the order of the Workers' Compensation Commission. Flake v. Randle Reed Trucking Co., 458 So. 2d 223, 1984 Miss. LEXIS 1954 (Miss. 1984).

All questions of law and fact are reviewable by the circuit judge in reviewing a compensation case under § 71-3-51, but unless prejudicial error is found or the verdict is against the overwhelming weight of the credible evidence, the commission's order is to be affirmed. Strickland v. M.H. McMath Gin, Inc., 457 So. 2d 925, 1984 Miss. LEXIS 1929 (Miss. 1984).

An order of the Workman's Compensation Commission remanding a claim to the administrative judge for further hearing was an interlocutory order and therefore not appealable to the circuit court. Southern Natural Resources, Inc. v. Polk, 388 So. 2d 494, 1980 Miss. LEXIS 2113 (Miss. 1980).

The Workmen's Compensation Commission is the trier of facts and judge of the credibility of witnesses and a finding by it, supported by substantial evidence, is not to be disturbed on appeal. Shippers Express v. Chapman, 364 So. 2d 1097, 1978 Miss. LEXIS 2235 (Miss. 1978).

Although this section [Code 1942, § 6998-26] provides for an appeal to the circuit court of the county in which the injury occurred, the circuit court of the county of claimants' residence has jurisdiction to hear the appeal despite the fact that the injury occurred elsewhere. Leake County Cooperative v. Dependents of Barrett, 226 So. 2d 608, 1969 Miss. LEXIS 1306, 1969 Miss. LEXIS 1307 (Miss. 1969).

The commission has full power and authority to determine all questions relating to claims for compensation, including the authority to make such investigations as it deems necessary; it has specific authority to order medical examinations; and comprehensive judicial review of the commission's action is provided for. Everitt v. Lovitt, 192 So. 2d 422, 1966 Miss. LEXIS 1257 (Miss. 1966).

Since order rejecting compensation claim was not final until it reached the supreme court, this section [Code 1942, § 6998-26] was applicable to a case which was pending in the supreme court at a time it was discovered that the applicant was not suffering from a disease, which formed the basis for the rejection of his claim for compensation. Pryor v. Woodall Industries, Inc., 250 Miss. 672, 167 So. 2d 920, 1964 Miss. LEXIS 486 (Miss. 1964).

While there is a division of authority as to whether or not the statute of limitations is tolled by the appeal, in view of the provisions of this section [Code 1942, § 6998-26], which must be read and considered in conjunction with Code 1942, § 6998-27, an applicant is entitled to file his application for a review of his compensation claim with the workmen's compensation commission within one year after the judgment of the supreme court finally rejects his claim. Pryor v. Woodall Industries, Inc., 250 Miss. 672, 167 So. 2d 920, 1964 Miss. LEXIS 486 (Miss. 1964).

The legal effect of the evidence and the conclusion drawn by the commission from the facts, as distinguished from its findings of evidentiary facts, is a question of law reviewable by the courts, especially where the facts are undisputed or overwhelmingly established. Central Electric Power Asso. v. Hicks, 236 Miss. 378, 110 So. 2d 351, 112 So. 2d 230, 1959 Miss. LEXIS 330 (Miss. 1959); M. T. Reed Constr. Co. v. Garrett, 249 Miss. 892, 164 So. 2d 476, 1964 Miss. LEXIS 444 (Miss. 1964).

Temporary disability is not conclusively presumed to continue until the appellate court's affirmance of an award therefor, so as to require payments of compensation for the period of pendency of the appeal. Jackson Ready-Mix Concrete v. Young, 236 Miss. 550, 111 So. 2d 255, 1959 Miss. LEXIS 349 (Miss. 1959).

Judicial review of findings of the commission extends to a determination of whether they are clearly erroneous; and a finding is erroneous where, although there is some slight evidence to support it, the court on the entire evidence is left with a definite conviction that a mistake has been made in the findings of fact and in applying the Workmen's Compensation Law. Central Electric Power Asso. v. Hicks, 236 Miss. 378, 110 So. 2d 351, 112 So. 2d 230, 1959 Miss. LEXIS 330 (Miss. 1959).

The commission's findings are to be reviewed on the whole record, and not merely on the evidence tending to support them. Central Electric Power Asso. v. Hicks, 236 Miss. 378, 110 So. 2d 351, 112 So. 2d 230, 1959 Miss. LEXIS 330 (Miss. 1959).

The application by the commission of the legislative standards is an appropriate question for judicial decision. Central Electric Power Asso. v. Hicks, 236 Miss. 378, 110 So. 2d 351, 112 So. 2d 230, 1959 Miss. LEXIS 330 (Miss. 1959).

This provision does not authorize a review de novo, but clearly states an intent that the reviewing court shall examine the record to determine whether the policies and purposes of the Workmen's Compensation Law are being carried out in the particular case, and whether the law is receiving a broad and liberal construction without over-emphasis on technicalities. Central Electric Power Asso. v. Hicks, 236 Miss. 378, 110 So. 2d 351, 112 So. 2d 230, 1959 Miss. LEXIS 330 (Miss. 1959).

Where facts are undisputed, the matter for decision is one of law, reviewable by the courts. Wilson v. International Paper Co., 235 Miss. 153, 108 So. 2d 554, 1959 Miss. LEXIS 413 (Miss. 1959).

Courts do not pass upon weight of conflicting reasonable medical evidence. Insurance Dep't of Mississippi v. Dinsmore, 233 Miss. 569, 104 So. 2d 296, 1958 Miss. LEXIS 420 (Miss. 1958).

The language in this section [Code 1942, § 6998-26], to the effect that the final award of the commission shall be conclusive and binding unless either party shall appeal within 30 days, evinces a legislative intent to postpone the conclusiveness and finality of the order until the expiration of the 30 days allowed for appeal. T. C. Fuller Plywood Co. v. Moffett, 231 Miss. 382, 95 So. 2d 475, 1957 Miss. LEXIS 523 (Miss. 1957).

2. Who may appeal.

Under this section [Code 1942, § 6998-26] either party is given the right to appeal within 30 days, and the fact that one party gives his notice of appeal one day before the other does not destroy the right of the other to appeal from the order of the workmen's compensation commission. Glenn-Phillips Masonry Contractors v. Glenn, 210 So. 2d 892, 1968 Miss. LEXIS 1536 (Miss. 1968).

Where the employer and its insurer did not preserve their right of appeal by an appeal or cross-appeal from the commission to the circuit court, their cross-appeal to the supreme court cannot be considered. B.J. Collins v. Miss. Employment Sec. Comm., 190 So. 2d 894, 1966 Miss. LEXIS 1419 (Miss. 1966).

Where the attorney-referee and commission had adjudicated liability for compensation benefits as to the insured member of a partnership and his insurance carrier, the failure to adjudicate the liability of the uninsured partner, who was also liable for payment of the compensation, gave the insurance carrier an appealable interest in the correctness of the commission's order; hence, the order of the commission was modified so as to adjudicate the liability for payment and compensation against the uninsured partner, in addition to the insured partner's carrier. United States Fidelity & Guaranty Co. v. Collins, 231 Miss. 319, 95 So. 2d 456, 1957 Miss. LEXIS 516, 1957 Miss. LEXIS 517 (Miss. 1957).

Although the original award did not allow an immediate lump sum payment, nor reasonable funeral expenses, nor compensation payments to the deceased prior to his death, where there had been no appeal by the claimants from the decision by the attorney-referee or the commission, their cross appeals could not be considered by the supreme court upon an appeal by the employer and his compensation carrier. Dixie Pine Products Co. v. Dependents of Bryant, 228 Miss. 595, 89 So. 2d 589, 1956 Miss. LEXIS 551 (Miss. 1956).

The right of appeal from the final award of the workmen's compensation commission is not limited to an aggrieved party or a party against whom an award or judgment has been rendered, but is conferred upon either party to the controversy. An employer of an unsuccessful claimant was a party to controversy and as such was entitled to appeal from an adverse finding by the commission. Phillips v. T. H. Mastin & Co., 223 Miss. 44, 77 So. 2d 677, 1955 Miss. LEXIS 350 (Miss. 1955).

Where there are rival claimants to an award and each is seeking to be recognized as the "widow" of the decedent, if an appeal is taken by either of the claimants or by the employer and the insurance carrier, such an appeal has the effect of bringing the entire case before the appellate court for review. Hill v. United Timber & Lumber Co., 68 So. 2d 420 (Miss. 1953).

3. Proceedings in Circuit Court.

When a circuit court reviews findings and conclusions of the Mississippi Workers' Compensation Commission, it sits as an intermediate court of appeals and reviews all questions of law and fact. When a decision of the Commission is before the circuit court on intermediate appeal, that court may not tamper with the findings of fact, where the findings are supported by a sufficient weight of evidence. Univ. of S. Miss. v. Gillis, 872 So. 2d 60, 2003 Miss. App. LEXIS 1193 (Miss. Ct. App. 2003), cert. denied, 873 So. 2d 1032, 2004 Miss. LEXIS 479 (Miss. 2004).

Although an appeal from a workers' compensation award must be filed to the circuit court of the county in which the injury occurred, such requirement is a matter of venue, rather than jurisdiction, and, therefore, the appropriate remedy when an appeal is filed with the wrong circuit court is a transfer of venue, rather than a dismissal. Underwood v. McRae's, 811 So. 2d 400, 2001 Miss. App. LEXIS 62 (Miss. Ct. App. 2001).

Function of circuit court and Supreme Court, on appeal from rulings of Workers' Compensation Commission, is to determine whether there exists quantum of credible evidence which supports decision, and not to determine where preponderance of evidence lies when evidence is conflicting, given that it is presumed that Commission, as trier of fact, has previously determined which evidence is credible and which is not. Hale v. Ruleville Health Care Ctr., 687 So. 2d 1221, 1997 Miss. LEXIS 34 (Miss. 1997).

Certainty is not a requisite in deciding a workers' compensation case, but, rather, the reviewing court considers reasonable medical probabilities. In other words, medical findings sufficient to show a compensable disability are not required to be precise, complete and unequivocal. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250, 1991 Miss. LEXIS 763 (Miss. 1991).

Deadline for claimant to file cross-appeal to appeal which has been timely filed by employer is in no sense jurisdictional and Circuit Court has greater latitude in enforcement of time limitations with respect to cross-appeals than in case of direct appeals. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584, 1985 Miss. LEXIS 2197 (Miss. 1985).

In an action regarding the denial of workmen's compensation death benefits the circuit court improperly dismissed a petition for appeal, where a motion requesting a review of the evidence by the commission which was filed within the statutory period for appealing the commission's order tolled the time for appeal until the commission entered its order on the motion; the error was harmless, however where the circuit court heard the appeal under the commission's order overruling the motion for review. Johnston v. Hattiesburg Clinic, P.A., 423 So. 2d 114, 1982 Miss. LEXIS 2281 (Miss. 1982).

Workmen's Compensation Commission is the trier of facts, as well as the judge of credibility of the witnesses, and the finding of the commission supported by substantial evidence should be affirmed by the circuit court; all questions of law and fact are reviewable by the circuit court judge, but he may not pass on the weight of the evidence where it is sufficient to support the commission's order. Roberts v. Junior Food Mart, 308 So. 2d 232, 1975 Miss. LEXIS 1855 (Miss. 1975).

Circuit courts, as intermediate courts of appeal in workmen's compensation cases, are governed by the same rules and endowed with the same powers applicable to courts of appeal under appellate tradition, and the circuit court did not abuse its discretion by dismissing an appeal where the appellant failed to file briefs and prosecute until 96 days after the return day, in violation of the court's rule. Gulf Coast Drilling & Exploration Co. v. Permenter, 214 So. 2d 601, 1968 Miss. LEXIS 1319 (Miss. 1968).

When the compensation commission's judgment is clearly erroneous and prejudicial on a question of law or fact, the circuit court on appeal should enter such judgment as the commission should have entered. Scott v. Brookhaven Well Service, 246 Miss. 456, 150 So. 2d 508, 1963 Miss. LEXIS 464 (Miss. 1963).

On review the test is whether the order of the workmen's compensation commission is supported by substantial evidence, and where the order is so supported, it is error for the circuit court to reverse the commission's order because in its opinion the claimant has failed to prove by a preponderance of the evidence that he is entitled to compensation. Babcock & Wilcox Co. v. McClain, 149 So. 2d 523 (Miss. 1963).

Where a finding of the attorney-referee in favor of claimants is affirmed by the commission and supported by substantial evidence, the award may not be removed on appeal to the circuit court. Gaines v. McCormick, 238 Miss. 535, 117 So. 2d 467, 1960 Miss. LEXIS 435 (Miss. 1960).

The circuit court is an appellate court which must consider appeals on the record as made before the trial court, and therefore the motion of the insurance carrier to include, as a part of the record in the appeal then pending before a circuit court, a report of the doctor who performed an operation on the claimant after the hearing before the commission was properly overruled. Federated Mut. Implement & Hardware Ins. Co. v. Spencer, 219 Miss. 68, 67 So. 2d 878, 1953 Miss. LEXIS 370 (Miss. 1953).

This section [Code 1942, § 6998-26], which allows court review of all questions of law and fact, enables the court on appeal to reverse the order of the compensation commission in a case where the court finds that such order was based upon findings of fact which were contrary to the weight of the evidence or upon an erroneous interpretation of the applicable provisions of the statute. Lucedale Veneer Co. v. Rogers, 211 Miss. 613, 48 So. 2d 148, 1950 Miss. LEXIS 356 (Miss. 1950).

4. —Preference cases.

An appeal from the denial of a claim for workmen's compensation benefits is not entitled to priority in hearing in the supreme court. Cuevas v. Sutter Well Works, 245 Miss. 478, 150 So. 2d 524, 1963 Miss. LEXIS 529 (Miss. 1963).

Under this section [Code 1942, § 6998-26] the review of workmen's compensation award is a preference case in the circuit court but is not given preference on the docket of the supreme court. Plumbing & Heating Service v. Strickland, 49 So. 2d 243 (Miss. 1950); Hill v. United Timber & Lumber Co., 221 Miss. 473, 62 So. 2d 776, 1953 Miss. LEXIS 404 (Miss. 1953).

5. — Judgments.

An order of the circuit court which reversed a finding of the industrial commission, and which was later affirmed by the supreme court, became the law of the case and established that there was not sufficient evidence to support an award for a permanent partial disability and was controlling upon a retrial following remand, so that in the absence of additional testimony, it would be the court's determination that the claimant had not established a permanent partial disability for which an award could be made. Consumer Discount Store v. Warren, 221 So. 2d 112, 1969 Miss. LEXIS 1493, 1969 Miss. LEXIS 1494 (Miss. 1969).

Where the Workers' Compensation Commission had issued no final order, the circuit court was without jurisdiction to hear an employer's appeal of the Commission's order dismissing the employer's appeal of an ALJ's decision granting the employee's motion to compel medical benefits. Cunningham Enters. v. Vowell, 937 So. 2d 32, 2006 Miss. App. LEXIS 561 (Miss. Ct. App. 2006).

Where, from a reading of a judgment of the circuit court which reversed the decision of workmen's compensation commission, it was clear that the court was of the opinion that there was prejudicial error in the record, the failure of the circuit court to incorporate in its judgment a formal recital that there was a prejudicial error did not invalidate the judgment of the circuit court. Hill v. United Timber & Lumber Co., 68 So. 2d 420 (Miss. 1953).

The amendment of the Workmen's Compensation Law placing awards of compensation made by judgment of circuit court in the same category as other judgments of circuit court and providing that, upon affirmance thereof, such judgments shall bear the same interest and penalties as to other judgment of circuit court, is plain and unambiguous and cannot be interpreted as placing such judgments awarding compensation in a more favored or different class than other judgments of circuit court. M. T. Reed Const. Co. v. Martin, 215 Miss. 472, 61 So. 2d 300, 1952 Miss. LEXIS 588 (Miss. 1952), overruled, Smith v. Jackson Constr. Co., 607 So. 2d 1119, 1992 Miss. LEXIS 487 (Miss. 1992).

6. Reversal, vacation, or modification of commission's award, generally.

In a workers' compensation case where the administrative judge awarded the claimant permanent total disability benefits benefits, under Miss. Code Ann. § 71-3-17, but the Mississippi Workers' Compensation Commission found in favor of the employer and denied those benefits, the appellate court exceeded its limited scope of review, Miss. Code Ann. § 71-3-51, in upholding the circuit court's ruling which overturned the decision of the Commission that the claimant did not sustain a second work-related injury because the Commission's ruling that the claimant had not sustained a second work-related injury was clearly supported by substantial evidence including: (1) the testimony of the claimant's co-workers that the claimant had not reported a second injury; (2) the fact that, aside from the claimant's own treating physician, there was no medical evidence supporting her claim of a second injury; and (3) the fact that the only persons testifying as to the claimant's alleged second injury were the claimant, her family, and her treating physician. Raytheon Aero. Support Servs. v. Miller, 861 So. 2d 330, 2003 Miss. LEXIS 581 (Miss. 2003).

Only in rather extraordinary cases should circuit court reverse findings of Workers' Compensation Commission. Hale v. Ruleville Health Care Ctr., 687 So. 2d 1221, 1997 Miss. LEXIS 34 (Miss. 1997).

Under highly deferential standard of review, Supreme Court and circuit courts will not overturn decision of Workers' Compensation Commission unless said decision is arbitrary and capricious. Hale v. Ruleville Health Care Ctr., 687 So. 2d 1221, 1997 Miss. LEXIS 34 (Miss. 1997).

The circuit court proceeded in a legally incorrect manner when it deferred to the findings of fact made by the Administrative Judge rather than those of the Full Commission. Smith v. Jackson Constr. Co., 607 So. 2d 1119, 1992 Miss. LEXIS 487 (Miss. 1992).

In reversing the Commission's fact-finding, reviewing courts are advised to provided detailed, written support for their conclusions. R.C. Petroleum, Inc. v. Hernandez, 555 So. 2d 1017, 1990 Miss. LEXIS 10 (Miss. 1990).

Decisions of the Mississippi Workers' Compensation Commission on issues of fact will not be overturned if they are supported by substantial evidence. The Commission is the trier of facts as well as the judge of the credibility of the witnesses. Doubtful cases should be resolved in favor of compensation so as to fulfill the beneficial purposes of the statute. Miller Transporters, Inc. v. Guthrie, 554 So. 2d 917, 1989 Miss. LEXIS 495 (Miss. 1989).

Workers' Compensation Commission's findings, even if supported by some slight evidence, may be determined to be clearly erroneous on review, if, on the entire record, the reviewing court has a firm and definite conviction that a mistake has been made in findings of fact. Delta Drilling Co. v. Cannette, 489 So. 2d 1378, 1986 Miss. LEXIS 2472 (Miss. 1986).

The substantial evidence rule to support the finding of an order of the workmen's compensation commission does not mean a small part of the total evidence, nor does the rule prevent an appellate court from examining the whole evidence to the end that the compensation law may be applied in a just and reasonable manner. Tiller v. Southern U. S. F., Inc., 246 So. 2d 530, 1971 Miss. LEXIS 1405 (Miss. 1971).

The role of the courts in judicially reviewing decisions of the workmen's compensation commission based upon factual findings is appellate only; if the findings of the commission are supported by substantial evidence they are to be affirmed. Presto Mfg. Co. v. Teat, 241 So. 2d 661, 1970 Miss. LEXIS 1354 (Miss. 1970).

An error in fixing the amount allowed for disability cannot be asserted for the first time on suggestion of error. Rigdon v. General Box Co., 249 Miss. 239, 162 So. 2d 863, 1964 Miss. LEXIS 390 (Miss. 1964).

Reviewing courts will not reverse findings of fact unless manifestly against the weight of evidence. Miss-Lou Equipment Co. v. McGrew, 247 Miss. 142, 153 So. 2d 801, 1963 Miss. LEXIS 287 (Miss. 1963).

Findings of the commission supported by substantial evidence will not be disturbed on appeal, though there is evidence which would have warranted a different result. Ed Bush Sandwich Shop v. Strauss, 243 Miss. 507, 138 So. 2d 741, 1962 Miss. LEXIS 368 (Miss. 1962).

Where the commission has reached the right result, the assignment of an improper ground is not cause for reversal. Mississippi Highway Patrol v. Dependents of Neal, 239 Miss. 505, 124 So. 2d 120, 125 So. 2d 544, 1960 Miss. LEXIS 315 (Miss. 1960).

Where the finding of the commission, that an injury, causing death, sustained by an employee in driving his automobile from the place of his employment to his home was compensable, was supported by substantial evidence, the circuit court erred in reversing commission's order. Pace v. Laurel Auto Parts, Inc., 238 Miss. 421, 118 So. 2d 871, 1960 Miss. LEXIS 422 (Miss. 1960).

Supreme court is not bound by the commission's decision on conflicting evidence, but will seek to ascertain whether or not the beneficent purpose of the Workmen's Compensation Law has been carried out. Russell v. Sohio Southern Pipe Lines, Inc., 236 Miss. 722, 112 So. 2d 357, 1959 Miss. LEXIS 369 (Miss. 1959).

Ordinarily, the supreme court will not disturb a commission finding; but where there is no substantial contradiction in the evidence the court may draw its own conclusion. Winters Hardwood Dimension Co. v. Dependents of Harris, 236 Miss. 757, 112 So. 2d 227, 1959 Miss. LEXIS 373 (Miss. 1959).

The rule that a decision of the commission on disputed issues of fact will be affirmed where the commission's findings are supported by substantial and reasonable evidence, applies only where the pertinent statute has been applied in a just and reasonable manner. Central Electric Power Asso. v. Hicks, 236 Miss. 378, 110 So. 2d 351, 112 So. 2d 230, 1959 Miss. LEXIS 330 (Miss. 1959).

The supreme court will not vacate or set aside an award of compensation where the finding of the commission, on a disputed question of fact, is supported by substantial evidence. Insurance Dep't of Mississippi v. Dinsmore, 233 Miss. 569, 104 So. 2d 296, 1958 Miss. LEXIS 420 (Miss. 1958); Thompson v. Armstrong Cork Co., 230 Miss. 730, 93 So. 2d 831, 1957 Miss. LEXIS 415 (Miss. 1957).

Court is bound by commission findings supported by substantial evidence. Grubbs v. Revell Furniture Co., 234 Miss. 319, 106 So. 2d 390, 1958 Miss. LEXIS 494 (Miss. 1958); Mississippi Public Service Com. v. Chambers, 235 Miss. 133, 108 So. 2d 550, 1959 Miss. LEXIS 411 (Miss. 1959); Cole v. Superior Coach Corp., 234 Miss. 287, 106 So. 2d 71, 1958 Miss. LEXIS 488 (Miss. 1958); I. B. S. Mfg. Co. v. Dependents of Cook, 241 Miss. 256, 130 So. 2d 557, 1961 Miss. LEXIS 341 (Miss. 1961); Cudahy Packing Co. v. Ward, 241 Miss. 595, 130 So. 2d 858, 1961 Miss. LEXIS 378 (Miss. 1961); Rivers Constr. Co. v. Dubose, 241 Miss. 527, 130 So. 2d 865, 1961 Miss. LEXIS 371 (Miss. 1961); (superseded by statute as stated in Lindsey v. Lindsey (Miss. 1992) 612 So. 2d 376) Pickering v. Sunnyland Drilling Co., 242 Miss. 871, 137 So. 2d 176, 1962 Miss. LEXIS 600 (Miss. 1962).

Where evidence as to whether claimant had in fact sustained any injury, and the extent of injury, if any, was in sharp conflict, the circuit court was in error in reversing the order of the commission denying an award. Boyd Constr. Co. v. Worthy, 234 Miss. 671, 107 So. 2d 120, 1958 Miss. LEXIS 537 (Miss. 1958).

Where there is any substantial evidence to support the findings of the commission and the circuit court, the supreme court is not at liberty to override such findings. Nicholas Co. v. Dodson, 232 Miss. 569, 99 So. 2d 666, 1958 Miss. LEXIS 304 (Miss. 1958).

7. —Commission's findings upheld.

Substantial evidence existed that a workers' compensation claimant sustained his injury while at work, notwithstanding confusion as to the date of the injury, because the Workers Compensation Commission found that: (1) the worker's testimony was credible; (2) his educational level contributed to the confusion of dates; and (3) he was a dependable, faithful employee, as well as a credible witness. F&F Constr. v. Holloway, 981 So. 2d 329, 2008 Miss. App. LEXIS 60 (Miss. Ct. App. 2008).

Circuit Court reversed the prior ruling of a 14 percent loss of wage earning capacity and found that the employee had suffered a 30 percent loss of wage-earning capacity, and the employee appealed yet again to the appellate court. The administrative law judge based his finding of a 14 percent loss of wage-earning capacity on a consideration of the employee's age, education, work history, and medical impairment, and the employee had been consistently employed since the injury in other positions at rates of pay not substantially less than what he had previously earned; thus, in finding a 30 percent loss of earning capacity, the circuit court applied an incorrect standard of review by reweighing the evidence presented and reversing the order of the Mississippi Workers' Compensation Commission as to loss of wage-earning capacity. Richards v. Harrah's Entm't, Inc., 881 So. 2d 329, 2004 Miss. App. LEXIS 861 (Miss. Ct. App. 2004).

A finding by the Workers' Compensation Commission that an injured manual laborer who was restricted by his doctor to lifting less than 40 pounds suffered only minimal industrial incapacity was not supported by substantial evidence where the decision was based largely on an alleged policy of the employer requiring workers to seek assistance when lifting more than 40 pounds, but the record contained no evidence of such a policy. DeLaughter v. South Cent. Tractor Parts, 642 So. 2d 375, 1994 Miss. LEXIS 367 (Miss. 1994).

The Workers' Compensation Commission's denial of benefits to an asthmatic employee would be reversed, even though a physician testified that there was not a "strong work-related causal connection between [the employee's] pneumonia and emphysema," where medical testimony established a causal connection between the exacerbation of her pre-existing respiratory problems and the inhalation of irritants in her work environment, and the employee's uncontroverted testimony of the onset pain in her side and back along with shortness of breath while she was performing her job duties established that her injury arose out of and in the course of her employment. Hedge v. Leggett & Platt, 641 So. 2d 9, 1994 Miss. LEXIS 362 (Miss. 1994).

A finding by the Workers' Compensation Commission that a lumberyard worker had sustained only a 50 percent loss of wage-earning capacity, and therefore suffered only partial rather than total permanent disability, would be reversed where the evidence indicated that he had difficulty performing "make-work" tasks at his employer's lumberyard after he returned to work and that his efforts to find other employment were unsuccessful, and the Commission's finding was based on the conclusion that the employee should have been able to secure "some type of gainful employment" merely because he had a high school education. Barnes v. Jones Lumber Co., 637 So. 2d 867, 1994 Miss. LEXIS 282 (Miss. 1994).

The circuit court did not err in reversing the Workers' Compensation Commission's finding that a claimant with a back injury had reached maximum medical improvement and suffered no permanent disability where there was evidence that the claimant had 2 ruptured discs surgically removed, specialists who initially concluded that the claimant had no ruptured discs did not later examine him after the discovery of the ruptured discs was made, and the employer failed to show that the claimant suffered any disassociated intervening injury which caused the ruptured discs, their surgical removal and the resulting disability. Marshall Durbin Cos. v. Warren, 633 So. 2d 1006, 1994 Miss. LEXIS 33 (Miss. 1994).

Since Worker's Compensation Commission's denial of benefits was supported by substantial evidence, the judgment of the circuit court reversing the commission and remanding case would be reversed. Penrod Drilling Co. v. Etheridge, 487 So. 2d 1330, 1986 Miss. LEXIS 2455 (Miss. 1986).

Award of additional benefits for a 1977 work-related injury, being supported by substantial evidence, would be affirmed, notwithstanding fact that claimant sustained injuries from a 1978 automobile accident. Emerson Electric Co. v. McLarty, 487 So. 2d 228, 1986 Miss. LEXIS 2442 (Miss. 1986).

Where evidence before the workmen's compensation commission posed an issue of fact as to whether an employee had been injured in the course of his employment, with some evidence supporting and other evidence refuting the employee's claim of injury, the determination of the issue was for the commission, and it was error for the court to reverse the commission's finding, which was supported by substantial evidence, that he had not sustained the injury. Presto Mfg. Co. v. Teat, 241 So. 2d 661, 1970 Miss. LEXIS 1354 (Miss. 1970).

Where the finding of the workmen's compensation commission is supported by substantial evidence, the supreme court is not authorized to reverse. Anderson v. Ingalls Shipbuilding Corp., 229 Miss. 670, 91 So. 2d 756, 1957 Miss. LEXIS 313 (Miss. 1957); Sullivan v. C. & S. Poultry Co., 234 Miss. 126, 105 So. 2d 558, 1958 Miss. LEXIS 473 (Miss. 1958).

Where the only assignment of error in the supreme court was that the circuit court erred in affirming the action of the commission in reversing the order of the attorney-referee and awarding compensation to the claimant, the sole question was whether there was substantial evidence to support the finding and order of the commission, and where this was answered in the affirmative, the supreme court was not warranted in reversing the action of the commission. City of Moss Point v. Collum, 230 Miss. 139, 92 So. 2d 456, 1957 Miss. LEXIS 353 (Miss. 1957).

Where a finding of the commission on a disputed question of fact is supported by substantial evidence, the circuit court should not, and neither will the supreme court, reverse the commission's judgment. Williams Bros. Co. v. McIntosh, 226 Miss. 553, 84 So. 2d 692, 1956 Miss. LEXIS 433 (Miss. 1956).

8. —Commission's findings reversed.

An order of the Workmen's Compensation Commission denying permanent partial benefits for injury to a claimant's back was not supported by substantial evidence, where the testimony of the only physician who examined claimant's back was to the effect that he had sustained injuries to his spine which were causally related to an industrial accident and that claimant had not reached maximum improvement as of the date of the hearing. Gray v. Poloron Products of Mississippi, 347 So. 2d 363, 1977 Miss. LEXIS 2045 (Miss. 1977).

Where a decision of the workmen's compensation commission is clearly erroneous and adverse to the overwhelming weight of the evidence, so that the commission's order fails to carry out the beneficent intent and purpose of the workmen's compensation law, the court must reverse the order of the commission, and a decision is clearly erroneous when, although there may be some evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made by the commission in its findings of fact and in its application of the law. Harpole Bros. Constr. Co. v. Parker, 253 So. 2d 820, 1971 Miss. LEXIS 1228 (Miss. 1971).

The circuit court properly reversed an order of the workmen's compensation commission denying compensation, where the order was clearly erroneous, and where the only possible basis for the denial was the testimony of one doctor which, when considered with the other evidence in the case, lost much of its character and did not amount to substantial evidence. Harpole Bros. Constr. Co. v. Parker, 253 So. 2d 820, 1971 Miss. LEXIS 1228 (Miss. 1971).

9. Particular injuries and circumstances; commission's findings upheld.

Testimony of neurosurgeon, to whom claimant was referred by her attorney, that claimant suffered five percent permanent disability was sufficient basis for Workers' Compensation Commission's ruling that claimant suffered five percent disability, although testimony was disputed by reputable physicians. Hale v. Ruleville Health Care Ctr., 687 So. 2d 1221, 1997 Miss. LEXIS 34 (Miss. 1997).

An employer's workers' compensation carrier would be liable for the injuries of an employee who was injured while changing a neighboring business' outdoor advertising sign where the employer had a policy of goodwill toward its business neighbors, which included changing the sign for the neighboring business, and the employees were expected to help foster the goodwill policy; since the employee acted in conformity with his employer's dictates, he acted in the course and scope of his employment, and was not a loaned servant to the neighboring business. Quick Change Oil & Lube v. Rogers, 663 So. 2d 585, 1995 Miss. LEXIS 582 (Miss. 1995).

The evidence was sufficient to support the Workers' Compensation Commission's finding that an employee's mental disability was caused by a deliberate course of conduct by his employer and that there was nothing in his psychological background to suggest a pre-existing personality disorder, so that the stresses to which the employee was subjected were "more than the ordinary incidents of employment" and were "untoward events or unusual occurrences" culminating in his subsequent disability, where a psychiatrist who treated the employee for over 2 years testified that the employee was psychologically disabled and that his work played a significant part in causing it, and testimony from the employee, the employee's wife, and fellow employees established a protracted pattern by the employer to put pressure and stress upon the employee. Borden, Inc. v. Eskridge, 604 So. 2d 1071, 1991 Miss. LEXIS 795 (Miss. 1991).

There was substantial evidence in a physician's testimony to support the Workers' Compensation Commission's determination as to the date a claimant reached maximum medical recovery, and therefore the circuit court erred in finding a different date based on the opinion of another physician. Jordan v. Hercules, Inc., 600 So. 2d 179, 1992 Miss. LEXIS 224 (Miss. 1992), but see Dulaney v. National Pizza Co., 733 So. 2d 301, 1998 Miss. App. LEXIS 990 (Miss. Ct. App. 1998).

The evidence was sufficient to support the Workers' Compensation Commission's finding that a claimant's hypertension was work-related, thus obliging the claimant's former employer to pay for medical expenses incurred by the claimant for periodic checkups for his hypertensive condition as ordered by his treating physician, where the claimant began to experience tension, anxiety and stomach problems, which the physician diagnosed as hypertension, during the time the claimant worked for the employer, and the physician concluded that the claimant's job caused him to experience significant stress which aggravated his hypertensive condition so as to require him to take a medical leave of absence. Berry v. Universal Mfg. Co., 597 So. 2d 623, 1992 Miss. LEXIS 151 (Miss. 1992).

A finding by the Workers' Compensation Commission that an employee's pre-existing heart condition was aggravated by exposure to chemicals in the workplace rendering him totally and permanently disabled was not clearly erroneous where the employee was exposed to numerous amounts of volatile chemicals under poor ventilation conditions for a period of 29 years and the testimony before the Commission revealed that the chemicals would enter the lungs and bloodstream and could have had an adverse effect upon the employee's heart. Mitchell Buick, Pontiac & Equipment Co. v. Cash, 592 So. 2d 978, 1991 Miss. LEXIS 980 (Miss. 1991).

The evidence was sufficient to support a finding by the Workers' Compensation Commission that noise at an employee's work site was a contributing, precipitating, or aggravating factor in the production of Meniere's Syndrome, even though the etiology of Meniere's Syndrome is largely unknown, where there was substantial evidence that exposure to high intensity noise for a period of years at the work site contributed to, aggravated or accelerated the employee's condition, and this evidence was not controverted by any direct medical evidence. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250, 1991 Miss. LEXIS 763 (Miss. 1991).

There was substantial evidence supporting a finding by the Workers' Compensation Commission that a claimant's impairment was a whole body injury rather than a schedule numbered injury only, where a physician identified the claimant's malady as Meniere's Syndrome, and he testified that Meniere's Syndrome is "an inner ear dysfunction that appears to be lifelong in nature" and that it affected the entire body in that, in addition to a loss of hearing, it involved a balance dysfunction affecting the claimant's activities of daily living, both occupationally and socially. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250, 1991 Miss. LEXIS 763 (Miss. 1991).

The evidence supported a finding that an employee suffered a 100 percent industrial loss of use of his left leg, rather than only a 40 percent loss, even though the employee's treating physician testified that the employee had a 40 percent permanent partial impairment of his left leg, where the physician also testified that the employee would be limited in activities such as standing for long periods, climbing ladders and stairs, and carrying heavy loads but that he could work in sedentary types of positions where he could sit to do the work, the employee was a 43-year-old man who dropped out of school during the 10th grade, from that time until the time of his injury he worked in construction, did carpentry work, and delivered furniture, at the time of the injury he was employed at a furniture company where he did not perform any one particular job but was moved around from job to job as needed, some of the jobs that he performed at the company included working in the sanding department, cutting out chest-of-drawer tops, and working in the mill, the employee testified that after his injury he could not do carpentry work and could not do any jobs which required him to stand but he could sand edges and use a table saw, and he testified that he continued to have problems with his leg every day, including swelling and pain. McGowan v. Orleans Furniture, Inc., 586 So. 2d 163, 1991 Miss. LEXIS 596 (Miss. 1991).

The evidence was sufficient to support a finding that a claimant suffered only a 5 percent permanent partial occupational disability by reason of a work-connected injury to his left hand, where the claimant failed to offer evidence that he had unsuccessfully attempted to perform his usual duties, and he failed to offer evidence that he was refused employment based upon the disability to his hand in that he made no search for work outside his prior employment, stating that his car had been repossessed and he was without transportation. Walker Mfg. Co. v. Cantrell, 577 So. 2d 1243, 1991 Miss. LEXIS 190 (Miss. 1991).

The Workers' Compensation Commission's findings that a truck driver sustained a compensable injury and that the repeated trauma of his work aggravated a pre-existing non-work-related condition were supported by substantial evidence where the worker's treating physician and the physician for the employer who conducted a physical examination required by the Department of Transportation had released the worker to return to work following treatment for a non-work-related back injury and the treating physician testified that the worker had a "chronically sore joint in the back that was apparently being aggravated by the nature of his work as a long-distance truck driver." Miller Transporters, Inc. v. Guthrie, 554 So. 2d 917, 1989 Miss. LEXIS 495 (Miss. 1989).

Reviewing court will not overturn finding of compensability of hysterical conversion reaction injury resulting when employer, through its agent, deliberately creates heightened expectation of advancement in particular worker and then triggers reaction by doing something worker can reasonably perceive as betrayal. Brown & Root Constr. Co. v. Duckworth, 475 So. 2d 813, 1985 Miss. LEXIS 2237 (Miss. 1985).

Commission finding of fact on apportionment of disability between injury on job and pre-existing condition will be reversed on appeal where finding has been made in broad conclusory language for which reviewing court finds no substantial evidence in record. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584, 1985 Miss. LEXIS 2197 (Miss. 1985).

Where the finding of the attorney-referee and the commission, that claimant was partially and permanently disabled to the extent of 15 percent to the body as a whole and that such disability resulted in a loss of 17 percent wage-earning capacity, was supported by substantial evidence, circuit court's judgment of reversal was reversed by the supreme court, and the case remanded to the commission. Grubbs v. Revell Furniture Co., 234 Miss. 319, 106 So. 2d 390, 1958 Miss. LEXIS 494 (Miss. 1958).

On a highly technical issue arising by reason of the divergent viewpoints of learned doctors, the supreme court will not undertake to adjudicate that a hemilegia attack resulted solely from thrombus or clot and that the increased blood pressure, owing to the stress and strain of the claimant's duties, could have had nothing whatever to do with her disability, especially where there was ample evidence from which the triers of fact were warranted in finding that the aggravation of the claimant's preexisting hypertension was one of the factors which contributed to the attack. Insurance Dep't of Mississippi v. Dinsmore, 233 Miss. 569, 104 So. 2d 296, 1958 Miss. LEXIS 420 (Miss. 1958).

Under conflicting evidence, an award of compensation to a claimant for injuries to his teeth, without any award for injuries to his coccyx, sacrum and rectum, was affirmed. Fondren v. Fortenberry Drilling Co., 233 Miss. 210, 101 So. 2d 654, 1958 Miss. LEXIS 373 (Miss. 1958).

Medical testimony supported the finding that an accidental burn suffered by the claimant while engaged in his duties, together with the resultant and anticipated treatment thereof, was causally related to and precipitated the claimant's heart attack. Harper Foundry & Machine Co. v. Harper, 232 Miss. 873, 100 So. 2d 779, 1958 Miss. LEXIS 342 (Miss. 1958).

Where there was abundant medical testimony to support the conclusion, the commission's decision denying a claim, upon the ground that the death of the employee, due to a heart attack, was not causally related to the activities of his employment, was affirmed. Halbert v. Lamar Advertising Agency, 231 Miss. 437, 95 So. 2d 535, 1957 Miss. LEXIS 528 (Miss. 1957).

Since the questions of whether or not a leg injury suffered by an employee in the course of his employment aggravated the pre-existing varicose veins, or whether the pre-existing condition interfered with the healing of the injury or otherwise caused the claimant to be temporarily totally disabled, were for determination of the commission, an award to the worker was affirmed. Jackson Ready-Mix Concrete v. Young, 230 Miss. 644, 93 So. 2d 645, 1957 Miss. LEXIS 405 (Miss. 1957).

Evidence, substantially consisting of the response of a medical specialist in cardiology and internal medicine to hypothetical questions, was sufficient to sustain the commission's finding that manual labor performed by a worker in handling lumber in the course of his employment with a lumber company was a precipitating cause of death due to coronary thrombosis. Lee v. Haltom Lumber Co., 230 Miss. 655, 93 So. 2d 641, 1957 Miss. LEXIS 407 (Miss. 1957).

In a workman's compensation proceeding for death benefits, the commission's finding, which was supported by substantial evidence, that the death of an employee caused by a heart condition was not attributable to the work of the employee's employment, and thus not compensable, was affirmed, although there may have been substantial evidence to support a contrary finding. Freeman v. Mississippi Power & Light Co., 230 Miss. 396, 92 So. 2d 658, 1957 Miss. LEXIS 382 (Miss. 1957).

Workmen's compensation commission's finding that there was a causal connection between claimant's heart attack and his work was supported by substantial evidence. Ingalls Shipbuilding Corp. v. Dickerson, 230 Miss. 110, 92 So. 2d 354, 1957 Miss. LEXIS 350 (Miss. 1957).

Contention that there was no causal connection between claimant's work and his stroke, but was brought on by a horseplay in which the claimant was the aggressor, was not sustained where it appeared that the claimant grabbed at his coworker's legs or pant legs to keep from falling when the attack came upon him, and the uncontradicted testimony of two doctors was that the mere act of the claimant in reaching or grabbing for the legs or pant legs of his coworker was not sufficiently strenuous to bring on or precipitate the claimant's attack. Prince v. Nicholson, 229 Miss. 718, 91 So. 2d 734, 1957 Miss. LEXIS 318 (Miss. 1957).

Where the overwhelming weight of the medical testimony showed that the employment in which the claimant was engaged was a contributing cause of his cerebral hemorrhage, resulting in a stroke which paralyzed his entire left side, the finding of the workmen's compensation commission awarding benefits was affirmed. Prince v. Nicholson, 229 Miss. 718, 91 So. 2d 734, 1957 Miss. LEXIS 318 (Miss. 1957).

Where the workmen's compensation commission's finding that there was no causal connection between the claimant's disability and the injury which occurred in the course of her employment was supported by substantial evidence, action of the commission in denying benefits to the claimant was affirmed upon appeal. Malley v. Over The Top, Inc., 229 Miss. 347, 90 So. 2d 678, 1956 Miss. LEXIS 614 (Miss. 1956).

Workmen's compensation commission's finding that there was no causal connection between claimant's disability and the injury which occurred in the course of her employment was supported by substantial evidence, including physicians' testimony fairly demonstrating that neither the injury nor the operation was the probable cause of the disabling pain and further showing that a preexisting disease, revealed by a pelvic examination, was the probable cause of the pain. Malley v. Over The Top, Inc., 229 Miss. 347, 90 So. 2d 678, 1956 Miss. LEXIS 614 (Miss. 1956).

Where an employee was determined to have tuberculosis on a date some six weeks after he had left the employment of his former employer and started working for an independent contractor, medical evidence, including testimony as to rapid progress of tuberculosis in members of the Negro race, as well as the difficulty of determining when the employee first contracted the disease, presented a question of fact for the workmen's compensation board as to whether the employee had the disease at the time he left the former employer's service, and its determination that he did not, being supported by substantial evidence, would be affirmed. Lawson v. Traxler Gravel Co., 229 Miss. 159, 90 So. 2d 204, 1956 Miss. LEXIS 596 (Miss. 1956).

Medical testimony, as well as other enumerated circumstances, constituted substantial evidence that the trauma to the deceased employee's back, caused by an injury arising in the course of his employment, lighted up, aggravated, accelerated or combined with a preexisting cancerous condition to produce his death. Dixie Pine Products Co. v. Dependents of Bryant, 228 Miss. 595, 89 So. 2d 589, 1956 Miss. LEXIS 551 (Miss. 1956).

10. —Commission's findings reversed.

Workers' compensation claimant's failure to present evidence regarding extent of care required before claimant was admitted to nursing home necessitated remand to determine how many hours a day of actual nursing care was needed, nature of services wife performed, and wage rate during relevant period, for purposes of calculating reimbursement for nursing services provided to claimant by his wife. Mississippi Transp. Comm'n v. Dewease, 691 So. 2d 1007, 1997 Miss. LEXIS 142 (Miss. 1997).

A circuit court judgment affirming the Workers' Compensation Commission's denial of benefits to a deceased employee's children was not supported by substantial evidence and would be reversed where the onset of the employee's death occurred at her place of employment and the employer failed to rebut the presumption that the employee's work activities did not cause or contribute to the condition from which she died; the unrebutted "found dead" legal presumption prevailed, satisfying the causal connection between the employee's work duties and the condition which resulted in her death. Nettles v. Gulf City Fisheries, 629 So. 2d 554, 1993 Miss. LEXIS 545 (Miss. 1993).

A finding that a claimant was not entitled to permanent disability benefits because his disability, which arose from slippage in the spine, was attributable entirely to preexisting spondylolisthesis was not supported by substantial evidence where there was conflicting medical testimony from 2 treating physicians as to the cause of the claimant's permanent disability and neither physician could determine how and when the slippage actually occurred, since close questions of compensability should be resolved in favor of the claimant, and the Workers' Compensation Act should be liberally construed to carry out its remedial purpose. McNeese v. Cooper Tire & Rubber Co., 627 So. 2d 321, 1993 Miss. LEXIS 444 (Miss. 1993).

An administrative law judge, as affirmed by the Workers' Compensation

Commission and the circuit court, erred as a matter of law when he specifically stated that a hearing on an injured employee's motion to consider the need for additional medical treatment at the employer's expense under General Rule 9 was limited to whether the employee was suffering from improper medical treatment or lack of medical treatment, and then proceeded to make findings on maximum medical recovery and apportionment; an administrative law judge may not announce a limited purpose of a hearing, require the litigants to argue under limitation, and then decide the whole of the case including the time of maximum recovery apportionment and compensation. Monroe v. Broadwater Beach Hotel, 593 So. 2d 26, 1992 Miss. LEXIS 11 (Miss. 1992).

The evidence was insufficient to support a finding by the Workers' Compensation Commission that a claimant's back injury was work related where no doctor testified that the claimant received this injury on the job, no fellow worker corroborated the claimant's assertion that his injury occurred while on the job, and the claimant never reported any work related injury to his employer. Bechtel Corp. v. Phillips, 591 So. 2d 814, 1991 Miss. LEXIS 838 (Miss. 1991).

Decision of Workmen's Compensation Commission awarding benefits on basis of alleged back injury will be reversed on judicial review on basis of lack of sufficient evidence where only testimony regarding injury is that of claimant and those claimant informed, initial medical consultation for injury is almost full year after injury, and claimant's conduct after injury is so inconsistent with that of employee injured in course of employment as to cause loss of credibility. Hudson v. Keystone Seneca Wire Cloth Co., 482 So. 2d 226, 1986 Miss. LEXIS 2334 (Miss. 1986).

A heart attack suffered by an employee while in the discharge of administrative duties was held by the supreme court to be compensable, notwithstanding the commission's contrary conclusion. Russell v. Sohio Southern Pipe Lines, Inc., 236 Miss. 722, 112 So. 2d 357, 1959 Miss. LEXIS 369 (Miss. 1959).

Where a truck driver accidentally lacerated his leg on June 26, 1954, causing considerable bleeding which continued to some extent even after medical attention, and following his release by the doctor to return to work, on July 5, 1954, the employee reported to work on July 9, 1954, while suffering from dizzy spells, and died on July 16th, 1954, as result of bleeding to death from a massive gastrointestinal hemorrhage and malignant hypertension, the attorney-referee's finding that death was not related to the injury of June 26th, the workmen's compensation commission's order affirming the finding, as well as the circuit court's affirming order, was not supported by substantial evidence and would be reversed. Williams v. Vicksburg Wholesale Poultry Co., 233 Miss. 384, 102 So. 2d 378, 1958 Miss. LEXIS 395 (Miss. 1958).

Where a doctor, who had examined the injured employee approximately four months prior to the time of the hearing, estimated the employee's disability at 15 percent but stated that he had not seen the claimant since that time, whereas a doctor who had examined the claimant on the day of the hearing stated that claimant's disability to the body as a whole was 50 to 75 percent, and that the leg was from 90 to 100 percent disabled so far as manual labor was concerned, the circuit court properly reversed the order of the workmen's compensation commission awarding to the injured claimant permanent partial benefits for only a 15 percent loss of use of his leg. A. De Weese Lumber Co. v. Poole, 231 Miss. 83, 94 So. 2d 791, 1957 Miss. LEXIS 491 (Miss. 1957).

Where both the claimant and a doctor who had last examined him on October, 6, 1955, testified at a hearing beginning on September, 1955 and concluding in November, 1955, that the claimant was suffering from a temporary total disability resulting from injury received in his employment, the circuit court properly reversed the workmen's compensation board's order denying claimant compensation benefits after June 5, 1955, which was based upon the opinion of a doctor who had last examined claimant on May 5, 1955, that claimant would be able to return to work within another month. Masonite Corp. v. Fields, 229 Miss. 524, 91 So. 2d 282, 1956 Miss. LEXIS 635 (Miss. 1956).

11. Damages.

When temporary disability is involved, there is no authority for commuting an award of attorney fees in workers' compensation action. Blankenship v. Delta Pride Catfish, 676 So. 2d 914, 1996 Miss. LEXIS 319 (Miss. 1996).

In workers' compensation cases, fees are allowed on the basis of fairness to attorney and client and it is the declared policy of the law to approve voluntary contracts for attorney fees within the stated limits. Blankenship v. Delta Pride Catfish, 676 So. 2d 914, 1996 Miss. LEXIS 319 (Miss. 1996).

Attorney for workers' compensation claimant was entitled to reasonable expenses pursuant to his contract with claimant. Blankenship v. Delta Pride Catfish, 676 So. 2d 914, 1996 Miss. LEXIS 319 (Miss. 1996).

Statutory damages in an amount of 5 percent were not allowable where the circuit court failed to enter a money judgment in favor of the claimant, but the claimant was entitled to 6 percent interest on the installments of compensation from their due dates until paid. Davis v. Clark-Burt Roofing Co., 238 Miss. 464, 119 So. 2d 926, 1960 Miss. LEXIS 429 (Miss. 1960).

Upon the affirmance of an award of workmen's compensation payments to the deceased employee's parents, who were found to be partially dependent upon the employee, claimants' motion for five percent statutory damages, and six percent interest on all installments which then had become due and remained unpaid, was sustained, as was their motion for attorneys' fees in the amount of one third of the award. Mid-State Paving Co. v. Farthing, 233 Miss. 333, 101 So. 2d 850, 1958 Miss. LEXIS 386 (Miss. 1958).

A claimant who was awarded only permanent partial disability benefits when he was entitled to temporary total disability benefits until he recovered from an operation and attained maximum recovery was, upon motion, entitled to damages in the amount of 5% and 6% interest. Houston Contracting Co. v. Reed, 231 Miss. 213, 95 So. 2d 231, 1957 Miss. LEXIS 507 (Miss. 1957).

Where the supreme court reversed the trial court's overturning of the workmen's compensation board's order allowing an employee compensation for a 50 percent loss of wage earning capacity, the 5 percent damages under Code 1942, § 1971, were not allowable. Russell v. Southeastern Utilities Service Co., 230 Miss. 272, 92 So. 2d 544, 1957 Miss. LEXIS 368 (Miss. 1957).

Where wages of decedent were shown and the commission awarded benefits to the claimants, so that amount of the award could be determined by simple mathematic calculation, the claimants were entitled to an allowance of damages of 5 percent. Railway Express Agency, Inc. v. Hollingsworth, 221 Miss. 688, 75 So. 2d 639, 1954 Miss. LEXIS 580, 1954 Miss. LEXIS 581 (Miss. 1954).

The right of appellee to allowance of 5 percent damages on the affirmance of the judgment of the circuit court is governed wholly by statutory enactment, and such damages can only be awarded in the cases expressly provided for by the statute. M. T. Reed Const. Co. v. Martin, 215 Miss. 472, 61 So. 2d 300, 1952 Miss. LEXIS 588 (Miss. 1952), overruled, Smith v. Jackson Constr. Co., 607 So. 2d 1119, 1992 Miss. LEXIS 487 (Miss. 1992).

The judgment of circuit court, in awarding workmen's compensation in certain amount per week for number of weeks, is not so definite and certain as to constitute a money judgment of which 5 percent damages can be calculated except as to the weekly installments which have already accrued and remained unpaid to the date of the entry of the judgment of affirmance. M. T. Reed Const. Co. v. Martin, 215 Miss. 472, 61 So. 2d 300, 1952 Miss. LEXIS 588 (Miss. 1952), overruled, Smith v. Jackson Constr. Co., 607 So. 2d 1119, 1992 Miss. LEXIS 487 (Miss. 1992).

In workmen's compensation cases, 5 percent of damages cannot be allowed unless the judgment affirmed awards a definite or a fixed sum of money. M. T. Reed Const. Co. v. Martin, 215 Miss. 472, 61 So. 2d 300, 1952 Miss. LEXIS 588 (Miss. 1952), overruled, Smith v. Jackson Constr. Co., 607 So. 2d 1119, 1992 Miss. LEXIS 487 (Miss. 1992).

12. Penalties.

Penalty for unsuccessful appeal is appropriate only when lower court's decision in workers' compensation case is affirmed in its entirety. Mississippi Transp. Comm'n v. Dewease, 691 So. 2d 1007, 1997 Miss. LEXIS 142 (Miss. 1997).

A 15 percent penalty cannot be imposed under § 11-3-23 on an appeal to the circuit court from the Mississippi Workers' Compensation Commission. Section 11-3-23 does not apply to an appeal from the Workers' Compensation Commission to the circuit court, and there is no provision for such a penalty under § 71-3-51 which gives the circuit courts the authority to review an order of the Commission. Delchamps, Inc. v. Baygents, 578 So. 2d 620, 1991 Miss. LEXIS 189 (Miss. 1991).

Where claimant's attorneys, at beginning of a hearing before the attorney-referee, moved that, in event claimant's claim was compensable, all penalties provided for in subsections (e) and (g) of Code 1942, § 6998-19, be assessed against the insurance carrier and its employer, but no such contention was made when the matter was heard by the commission on review and claimant prosecuted no cross-appeal to the circuit court, the matter of allowing penalties under the above provisions was not before the supreme court on appeal. Fair Stores v. Bryant, 238 Miss. 434, 118 So. 2d 295, 1960 Miss. LEXIS 424 (Miss. 1960).

The court will not determine whether a penalty should have been allowed for failure of the employer to report the injury where no request therefor was made to the commission. Gulf Park College v. Wheeler, 237 Miss. 155, 113 So. 2d 666, 1959 Miss. LEXIS 458 (Miss. 1959).

On reversing a denial of death benefits, the supreme court will leave it to the commission to say whether penalties should be imposed, but will direct the allowance of interest at 6% on death benefits from the date the beneficiaries were entitled to receive them. Russell v. Sohio Southern Pipe Lines, Inc., 236 Miss. 722, 112 So. 2d 357, 1959 Miss. LEXIS 369 (Miss. 1959).

Code 1942, § 6998-19(f), providing that the 20 percent penalty should be assessed if any installment payment under the terms of an award is not made within 14 days after it becomes due, means that the period of 14 days should be calculated from the date the order making the award becomes final. T. C. Fuller Plywood Co. v. Moffett, 231 Miss. 382, 95 So. 2d 475, 1957 Miss. LEXIS 523 (Miss. 1957).

Where a compensation insurance carrier, who had been ordered by the workman's compensation commission to make compensation payments to the claimant, complied with the commission's order 23 days after the date the order was entered and seven days before the time the statutory right of appeal from the order had expired, the claimant was not entitled to the 20 percent penalty provided by Code 1942, § 6998-19(f). T. C. Fuller Plywood Co. v. Moffett, 231 Miss. 382, 95 So. 2d 475, 1957 Miss. LEXIS 523 (Miss. 1957).

13. Interest.

Claimant was entitled to interest at the rate of 6 percent per annum on each instalment of compensation from its due date until paid, and to 5 percent statutory damages on all payments due at the time the judgment of affirmance was entered by supreme court. Fair Stores v. Bryant, 238 Miss. 434, 118 So. 2d 295, 1960 Miss. LEXIS 424 (Miss. 1960).

On reversing circuit court decision setting aside an award, supreme court will direct payment of interest from the due date of each unpaid instalment. Grubbs v. Revell Furniture Co., 234 Miss. 319, 106 So. 2d 390, 1958 Miss. LEXIS 494 (Miss. 1958).

Interest on compensation payments prior to date of supreme court's judgment, reversing a denial of compensation, denied. Poole v. R. F. Learned & Son, 234 Miss. 362, 103 So. 2d 396, 1958 Miss. LEXIS 503 (Miss.), modified, Poole v. R. F. Learned & Sons, 234 Miss. 362, 105 So. 2d 162, 1958 Miss. LEXIS 504 (Miss. 1958).

Claimants were entitled to interest at 6 percent per annum from the respective due dates of workmen's compensation payments until paid or tendered. Dependents of Harris v. Suggs, 233 Miss. 533, 102 So. 2d 696, 1958 Miss. LEXIS 413 (Miss. 1958).

On a motion to correct judgment, supreme court adjudged that each installment of compensation should bear 6% interest from its date until paid, and the claimant was entitled to 5% damages on unpaid installments with interest that had accrued to date. United States Fidelity & Guaranty Co. v. Collins, 231 Miss. 319, 95 So. 2d 456, 1957 Miss. LEXIS 516, 1957 Miss. LEXIS 517 (Miss. 1957).

Where the supreme court reversed the trial court's overturning of a workman's compensation board's order allowing employee compensation for 50 percent loss of wage earning capacity, employee's motion for 6 percent interest was sustained to the extent that each weekly instalment of compensation should bear interest at the rate of 6 percent per annum from its due date until paid. Russell v. Southeastern Utilities Service Co., 230 Miss. 272, 92 So. 2d 544, 1957 Miss. LEXIS 368 (Miss. 1957).

RESEARCH REFERENCES

ALR.

Longshoremen's and Harbor Workers' Compensation Act (33 USCS §§ 901 et seq.): right of Director of Office of Workers' Compensation Programs to intervene in proceeding to review decision of Benefits Review Board. 48 A.L.R. Fed. 839.

Am. Jur.

82 Am. Jur. 2d, Workmen's Compensation §§ 587 et seq.

25 Am. Jur. Pl and Pr Forms (Rev), Workmen's Compensation, Forms 1 et seq.

CJS.

100A C.J.S., Workers' Compensation §§ 1223-1225 et seq.

§ 71-3-53. Continuing jurisdiction of the commission.

Upon its own initiative or upon the application of any party in interest on the ground of a change in conditions or because of a mistake in a determination of fact, the commission may, at any time prior to one (1) year after date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one (1) year after the rejection of a claim, review a compensation case, issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury; and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation in such manner and by such method as may be determined by the commission.

HISTORY: Codes, 1942, § 6998-27; Laws, 1948, ch. 354, § 21; reenacted without change, Laws, 1982, ch. 473, § 27; reenacted without change, Laws, 1990, ch. 405, § 28, eff from and after July 1, 1990.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability.
3. Redetermination after review.
4. Limitations period, generally.
5. —After closing of case.
6. —After rejection of claim.

7. — After dismissal of claim.

1. In general.

Workers' Compensation Commission did not abuse its discretion in denying claimant's motion to reopen; substantial evidence supported the finding that there was no mistake of fact. Prior to claimant's decision to settle his claim, medical providers repeatedly discussed with claimant his slipped disc diagnosis and his option to elect surgery and the evidence contradicted the claimant's assertion that he was tricked into thinking he only had a pulled muscle. There had not been any change in conditions that justified reopening the case. Curry v. Ashley Furniture Indus., 296 So. 3d 193, 2020 Miss. App. LEXIS 171 (Miss. Ct. App. 2020).

Mississippi Workers' Compensation Commission did not abuse its discretion by declining to reopen a claimant's case based on evidence that could have been produced at the original hearing as the evidence submitted in support of the motion to reopen did not disprove the finding of the original decision that the claimant deviated from the course and scope of the claimant's employment to engage in a road rage incident with a motorist. Huey v. RGIS Inventory Specialists & Fid. & Guar. Ins. Co., 269 So. 3d 362, 2018 Miss. App. LEXIS 196 (Miss. Ct. App.), cert. denied, 258 So. 3d 286, 2018 Miss. LEXIS 522 (Miss. 2018).

Mississippi Workers' Compensation Commission's ruling that there was no mistake in determination of fact about an employee's work-related injury under Miss. Code Ann. § 71-3-53 was supported by substantial evidence, which included doctor's reports stating that the employee would probably need back surgery in the future as a result of her pre-existing condition. North Miss. Med. Ctr. v. Stevenson, 12 So. 3d 1149, 2009 Miss. App. LEXIS 267 (Miss. Ct. App. 2009).

Where an employer voluntarily paid for an employee's work-related medical expenses for two years and the employee subsequently filed a petition to controvert, the employee's argument under Miss. Code Ann. § 71-3-53 was improper because a review and change of compensation was not at issue since the Mississippi Workers' Compensation Commission never ordered any form of compensation in the employee's case. Baker v. IGA Super Valu Food Store, 990 So. 2d 254, 2008 Miss. App. LEXIS 246 (Miss. Ct. App.), cert. denied, 994 So. 2d 186, 2008 Miss. LEXIS 458 (Miss. 2008).

Wording of Miss. Code Ann. § 71-3-53 indicates that it applies in situations where there has been no compensation award. Edwards v. Wal-Mart, 930 So. 2d 1273, 2006 Miss. App. LEXIS 271 (Miss. Ct. App. 2006).

Workers' Compensation Commission had continuing jurisdiction to review a compensation case, issue a new compensation order which could terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. Walls v. Franklin Corp., 797 So. 2d 973, 2001 Miss. LEXIS 264 (Miss. 2001).

The Workers' Compensation Commission did not abuse its discretion and was not clearly erroneous in its decision not to reopen a case where (1) it had substantial evidence before it to make an informed decision, and (2) although the claimant asserted that 23 of his medical reports were not made available to the commissioner for her consideration in approving a settlement, he did not state what information was contained in these reports and did not show how those reports could have changed the outcome of the settlement had they been included in the commission's portfolio of information. J. R. Logging v. Halford, 765 So. 2d 580, 2000 Miss. App. LEXIS 215 (Miss. Ct. App. 2000).

Previous adjudication by Circuit Court judge denying workmens' compensation benefit is res judicata to second proceeding on claim except to extent that case may be reopened for change of condition or because of mistake in determination of fact; reopening because of mistake in determination of fact may be made on basis of newly discovered evidence or evidence which for whatever good reason was not previously reflected in record and could include evidence to establish essential causal connection between initial injury and contemporaneous or resulting physical or mental disability; in order for reopening to be granted on basis of change in condition, there must be evidence presented to support finding indicating previous mistake in determination of fact so as to establish causal connection between initial injury and claimant's present condition. Aetna Casualty & Surety Co. v. Espinosa, 469 So. 2d 64, 1985 Miss. LEXIS 1868 (Miss. 1985).

In a workmen's compensation case arising out of a compromise settlement for a lump-sum payment made by an injured worker, the trial court properly reinstated an order of the administrative judge to reopen the cause with further proceedings to determine benefits where the employee, who possessed a fourth-grade education and was unable to read or write except to sign his name, had never been informed of the full extent of his disability, had not been represented by counsel during the settlement negotiations, had not been told the full amount of disability benefits to which he was entitled, and, generally, had been taken unfair advantage of by the carrier. Bailey Lumber Co. v. Mason, 401 So. 2d 696, 1981 Miss. LEXIS 2012 (Miss. 1981).

Assuming that a change in the claimant's ability to get or hold employment may be considered to be a change of conditions within the meaning of this section, the claimant did not satisfy her burden of proof where her evidence did not establish that she had been refused employment because of her disability. North Mississippi Medical Center v. Henton, 317 So. 2d 373, 1975 Miss. LEXIS 1734 (Miss. 1975).

An application to reopen under this section may not be used as a substitute for the right of appeal, and the commission did not abuse its discretion in refusing to reopen a case on the ground that there had been no award for permanent disability even though the record showed a 15% permanent partial disability had been established by the medical evidence. North Mississippi Medical Center v. Henton, 317 So. 2d 373, 1975 Miss. LEXIS 1734 (Miss. 1975).

As a general rule the right to reopen proceedings to take further evidence in a workmen's compensation hearing is within the sound discretion of the commission. Marshall v. Oliver Electric Mfg. Co., 235 So. 2d 244, 1970 Miss. LEXIS 1432 (Miss. 1970).

The reopening of a case is in the discretion of the commission, and if its determination has a reasonable basis it will be affirmed. Armstrong Tire & Rubber Co. v. Franks, 242 Miss. 792, 137 So. 2d 141, 1962 Miss. LEXIS 594 (Miss. 1962).

This section [Code 1942, § 6998-27] does not apply to a case in which claimant, the extent of whose disability it was not possible to ascertain, knowingly entered into a compromise settlement. Dixon v. Green, 240 Miss. 204, 127 So. 2d 662, 1961 Miss. LEXIS 450 (Miss. 1961).

Whether an award will be reviewed under this section [Code 1942, § 6998-27] because of a change in conditions or a mistake in a determination of fact is discretionary with the commission. Hudgins v. Marine Welding & Repair Works, 237 Miss. 301, 114 So. 2d 767, 1959 Miss. LEXIS 469 (Miss. 1959).

Refusal to reopen a compensation case for the introduction of further evidence was within the discretion of the workmen's compensation commission. Ainsworth v. Long-Bell Lumber Co., 233 Miss. 38, 101 So. 2d 100, 1958 Miss. LEXIS 354 (Miss. 1958).

The workmen's compensation commission may exercise its sound discretion with reference to reopening a case, and so long as its discretion is not abused, its action in refusing to reopen the matter will not constitute reversible error. Estate of West v. Southern Bell Tel. & Tel. Co., 228 Miss. 890, 90 So. 2d 1, 1956 Miss. LEXIS 578 (Miss. 1956).

2. Applicability.

Motion to enforce the Workers' Compensation Commission's compromise settlement order was not barred by the one-year statute of limitations in this section, because the claimant did not claim additional benefits or future benefits but only sought to enforce the Commissioner's previous order approving the settlement in which the insurer agreed to pay the benefits the claimant sought to have paid. Cleveland v. Advance Auto Parts, 305 So. 3d 1144, 2020 Miss. LEXIS 441 (Miss. 2020).

3. Redetermination after review.

Mississippi Workers' Compensation Commission did not err in affirming the administrative judge's order denying the claimant's motion for medical treatment as he failed to meet his burden of showing a change in conditions related to his prior work injury because the Commission found no mention in the records that the claimant's current complaints related to his prior work injury; and he failed to present any medical testimony or evidence to support his claim; thus, the claimant's request to re-open his claim was properly denied. Mabus v. Mueller Indus., 310 So. 3d 1192, 2020 Miss. App. LEXIS 390 (Miss. Ct. App. 2020), cert. denied, 310 So. 3d 830, 2021 Miss. LEXIS 24 (Miss. 2021).

Workers' Compensation Commission properly denied an employee's request to re-open her claim four months after it was settled through mediation because the employee did not make any arguments in support of a change in circumstance regarding her injuries or a mistake in determination of fact regarding her settlement and nothing in the record indicated the administrative judge forced the employee into mediation or erred in accepting the settlement agreement provided by the employee and the employer. Wright v. Minact Logistical Servs., LLC, 254 So. 3d 858, 2018 Miss. App. LEXIS 211 (Miss. Ct. App.), cert. denied, 254 So. 3d 171, 2018 Miss. LEXIS 411 (Miss. 2018).

Workers' Compensation Commission erred in granting an employer's motion to reopen and in vacating its prior order approving the parties' settlement because, while the employee died after signing the settlement and before it was approved by the Commission, there was no dispute that there was a meeting of the minds prior to his death and the employer did not show how the employee's death after the settlement was signed by the parties and submitted to the Commission, had any bearing on the issue of whether the mistake of fact (the Commission's assumption that the employee was still alive when it approved the settlement) related to a valid reason for setting aside the settlement. Taylor v. Reliance Well Serv., 220 So. 3d 260, 2017 Miss. App. LEXIS 296 (Miss. Ct. App. 2017).

Reversal of Workers' Compensation Commission's denial of a former employer's motion to discharge its obligation to pay a former worker's asthma related medical expenses was errer because the employer failed to show that its medical expert based his conclusion that the asthma was not caused by the worker's employment on evidence that was not available to the employer at the original compensation determination. Jackson v. GSX Polymers, Inc., 107 So. 3d 1049, 2013 Miss. App. LEXIS 18 (Miss. Ct. App. 2013).

Mississippi Worker's Compensation Commission did not err in failing to reopen a claim because there was no merit to the claimant's assertion that there was a mistake in a determination of fact regarding the Commission not having the claimant's address or the claimant failing to pursue the claim for workers' compensation benefits. Rea v. Foamex, 133 So. 3d 855, 2013 Miss. App. LEXIS 523 (Miss. Ct. App. 2013), cert. denied, 133 So. 3d 818, 2014 Miss. LEXIS 151 (Miss. 2014).

Workers' Compensation Commission's denial of an employee's right to reopen his previously settled workers' compensation claims was supported by substantial evidence because the settlement seemed fair and reasonable, and his termination soon after reaching the settlement did not constitute a mistake of fact that would have warranted reopening, as there was no proof that the employee had a reasonable expectation of continued employment at the time that he entered the settlement. Sims v. Ashley Furniture Indus., 964 So. 2d 625, 2007 Miss. App. LEXIS 608 (Miss. Ct. App. 2007).

Mississippi Workers' Compensation Act allows a party to petition the Mississippi Workers' Compensation Commission to review a compensation case, issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation, at any time prior to one year after date of last payment of compensation. Kemper Nat'l Ins. Co. v. Coleman, 812 So. 2d 1119, 2002 Miss. App. LEXIS 49 (Miss. Ct. App. 2002).

The claimant was not entitled to have his compensation claim reopened on the basis that the Workers' Compensation Commission based its decision on the in-actions of his former attorney. Pennington v. U.S. Gypsum Co., 722 So. 2d 162, 1998 Miss. App. LEXIS 712 (Miss. Ct. App. 1998).

While the decision to reopen a case is within the discretion of the Workers' Compensation Commission, the Commission abused its discretion when it failed to even consider the applicability of § 71-3-53 when it decided not to reopen a case. Staples v. Blue Cross & Blue Shield, Inc., 585 So. 2d 747, 1991 Miss. LEXIS 583 (Miss. 1991).

The Workers' Compensation Commission had the power and authority to reopen a claim despite the fact that the claimant had accepted a lump-sum settlement and had signed a full release. Litigants and attorneys on both sides have a duty to fully inform the Commission in such settlements and where they fail to do so or where the Commission makes a "mistake of fact" that is detrimental to either party, there is the granted authority to deal with the mistake or the wrong. Thus, where the true facts regarding the extent of the claimant's medical recovery were not known to the Commission at the time the initial settlement was approved, the Commission had every right to believe that it had made a mistake of fact about the claimant's medical condition when it approved her lump-sum settlement, and therefore the Commission was justified in reopening the claim and in making a subsequent award of permanent total disability. Metal Trims Industries, Inc. v. Stovall, 562 So. 2d 1293, 1990 Miss. LEXIS 277 (Miss. 1990).

Commission did not abuse its discretion in refusing to reopen case of employee sustaining back injury at work, in light of thermogram whose results did not show changing condition but was merely new evidence of initially determined injury. Davis v. Scotch Plywood Co., 505 So. 2d 1192, 1987 Miss. LEXIS 2409 (Miss. 1987).

Jurisdiction was vested in the Workmen's Compensation Commission upon the claimant's filing her original two motions to controvert, and jurisdiction remained vested in the commission throughout the hearings conducted by an administrative judge and through the time when he issued his order, since jurisdiction of workmen's compensation claims is vested totally completely and exclusively in the commission and such jurisdiction cannot pass back and forth from the commission to an administrative judge inasmuch as an administrative judge is merely a facility of the commission. Day-Brite Lighting Div., Emerson Electric Co. v. Cummings, 419 So. 2d 211, 1982 Miss. LEXIS 2140 (Miss. 1982).

In view of the attorney referee's finding that an examination and the written narrative report of the examining physician upset the previous medical findings, there was an abuse of discretion in the referee's refusal to allow the employer and its insurer to cross-examine the claimant about a false medical history given to the physician and to introduce other testimony relative to such history. Marshall v. Oliver Electric Mfg. Co., 235 So. 2d 244, 1970 Miss. LEXIS 1432 (Miss. 1970).

This section [Code 1942, § 6998-27] embraces an application to set aside an order approving a lump-sum settlement. Dapsco, Inc. v. Dependent of Upchurch, 243 Miss. 427, 138 So. 2d 287, 1962 Miss. LEXIS 359 (Miss. 1962).

A commuted lump-sum payment of voluntary compensation does not preclude reopening of the case for a redetermination of the extent of disability. Armstrong Tire & Rubber Co. v. Franks, 242 Miss. 792, 137 So. 2d 141, 1962 Miss. LEXIS 594 (Miss. 1962).

The purpose of this section [Code 1942, § 6998-27] is to permit the correction of erroneous determinations of fact. Armstrong Tire & Rubber Co. v. Franks, 242 Miss. 792, 137 So. 2d 141, 1962 Miss. LEXIS 594 (Miss. 1962).

Under this section [Code 1942, § 6998-27] the commission may increase or decrease awards prospectively or retroactively during the continuance of disability. Komp Equipment Co. v. Clinton, 236 Miss. 560, 112 So. 2d 541, 1959 Miss. LEXIS 351 (Miss. 1959).

This provision authorizes the commission to increase or decrease awards prospectively or retroactively, and gives the commission broad powers in adjusting awards. Jackson Ready-Mix Concrete v. Young, 236 Miss. 550, 111 So. 2d 255, 1959 Miss. LEXIS 349 (Miss. 1959).

The workmen's compensation commission has the power to make a new finding increasing disability payments retroactive in its effect to the original date of the injury so as to change a percentage of disability found in previous order of the commission not appealed from. Roling v. Hatten & Davis Lumber Co., 226 Miss. 732, 85 So. 2d 486, 1956 Miss. LEXIS 457 (Miss. 1956).

Where the employer and insurer in a brief on a former appeal stated that they owed compensation to one of the alleged widows and concluded that they should not appeal from the commissioner's order, the employer and compensation carrier were not estopped from denying that neither of the two alleged widows were entitled to compensation benefits where it appeared that nobody knew that a prior husband of one of the widows was alive and where neither of the alleged widows has changed her position. United Timber & Lumber Co. v. Alleged Dependents of Hill, 226 Miss. 540, 84 So. 2d 921, 1956 Miss. LEXIS 432 (Miss. 1956).

Where each of two claimants filed claims as the widow of the deceased and the supreme court entered judgment in favor of one of the claimants and later a witness was found who was the husband of the successful claimant at the time she was married to the deceased, the supreme court remanded the cause to the circuit court to be by it remanded to the commission for a rehearing of the existing facts. Hill v. United Timber & Lumber Co., 221 Miss. 473, 62 So. 2d 776, 1953 Miss. LEXIS 404 (Miss. 1953).

4. Limitations period, generally.

Trial court erred by determining that the one-year statute of limitations barred the claimant's post-settlement motions for relief seeking to get the employer to pay two of the claimant's outstanding medical bills pursuant to a settlement because the employer was estopped from asserting the statute of limitations defense because it knew of and previously agreed to pay the claimant's outstanding bills and because it represented to the administrative judge that it was processing one bill and had paid the other bill. In addition, although the Form B-31 was properly filed, the claimant's contact with the employer sufficiently tolled any statutory limitations period. Cleveland v. Advance Auto Parts & Indem. Ins. Co. of N. Am., — So. 3d —, 2019 Miss. App. LEXIS 588 (Miss. Ct. App. Dec. 10, 2019).

With respect to a worker's motion to reopen the record in a previously adjudicated case, the statute of limitations had not begun to run against the worker because the employer admitted that it had never filed a form B-31 (Report of Payment and Settlement Receipt), and alternatively, the statute had been tolled because the employer had continuously furnished the worker's prescription drugs; however, the commission's decision to deny the motion to reopen had to be affirmed because the worker, although laid off, did not support the motion with any evidence that he had experienced an economic change in condition. Broadway v. Int'l Paper, Inc., 982 So. 2d 1010, 2008 Miss. App. LEXIS 299 (Miss. Ct. App. 2008).

Trial court did not err in finding the reinstatement of an employee's workers' compensation claim to be time barred under the one-year time period in Miss. Code Ann. § 71-3-53 and the two-year period in Miss. Code Ann. § 71-3-35, where even using the employee's calculation, the two-year deadline would have expired before she filed her motion for reinstatement. Edwards v. Wal-Mart, 930 So. 2d 1273, 2006 Miss. App. LEXIS 271 (Miss. Ct. App. 2006).

Employee's workers' compensation claim for injuries in 1992 and 1995 was barred as the employee had filed a B-31 form shortly after each injury that allowed the employer to close the claim one year after the form had been filed. Hancock v. Miss. Forestry Comm'n, 878 So. 2d 1058, 2004 Miss. App. LEXIS 694 (Miss. Ct. App. 2004).

Where the claimant received benefits for about three weeks after her accident, the statute of limitations in this section applied, rather than that of § 71-3-35(1). Taylor v. Salvation Army-Pascagoula Corps, 744 So. 2d 825, 1999 Miss. App. LEXIS 260 (Miss. Ct. App. 1999).

Where a Notice of Controversy was filed some months after the claimant's injury, it failed to properly controvert the claim and, as a consequence, it did not toll the statute of limitations that began to run when the employer subsequently filed a form B-31. ABC Mfg. Corp. v. Doyle, 1998 Miss. App. LEXIS 1118 (Miss. Ct. App. Dec. 30, 1998).

The filing of an Entry of Appearance by the claimant's attorneys did not serve to toll the statute of limitations which began to run when the employer filed a form B-31 since the document, without additional action on the claimant's part, inadequately identified her intention to seek relief. ABC Mfg. Corp. v. Doyle, 1998 Miss. App. LEXIS 1118 (Miss. Ct. App. Dec. 30, 1998).

In a workman's compensation action claimant's petition for payment of compensation for nursing services provided by petitioner's wife was not barred by the statute of limitations § 71-3-53, where the employer paid medical expenses up to and including the month when claimant petitioned to be furnished nursing services, and where the payment of these expenses constituted a payment of compensation for the purpose of tolling the one-year statute of limitations. City of Kosciusko v. Graham, 419 So. 2d 1005, 1982 Miss. LEXIS 2137 (Miss. 1982).

The one-year statute of limitations contained in § 71-3-53 barred the claim of a worker's compensation claimant, who had been fitted with an artificial leg following a work-related accident in the scope of his employment, had required no medical treatment or service for a period of one year subsequent to the last treatment or payment of medical benefits, and had had no need for a new prosthetic device until more than one year after the last medical payment, where the claimant filed his claim more than one year after that payment. Barr v. Conoco Chemicals, Inc., 412 So. 2d 1193, 1982 Miss. LEXIS 1926 (Miss. 1982).

Where claimant, injured on Jan. 15, 1960, signed final settlement report filed on Feb. 18, 1960, and filed claim for same injury on Mar. 20, 1961, and subsequently on Oct. 31, 1962 amended his claim to include injuries occurring on May 1, 1960, question of whether amendment related back to date of filing original claim so as to take it out of 1-year and 2-year limitations periods depended upon whether later injury was a new injury or further disability for previous injury, and this was a question of fact to be determined by commission. Yazoo Mfg. Co. v. Schaffer, 254 Miss. 35, 179 So. 2d 784, 1965 Miss. LEXIS 921 (Miss. 1965).

The supplying or authorizing of medical benefits within the year allowed for reopening compensation cases tolls the statute. Turnage v. Lally's Swimming Pool Co., 247 Miss. 713, 159 So. 2d 84, 1963 Miss. LEXIS 349 (Miss. 1963).

A barred claim is not revived by the furnishing or authorizing of medical services after the claim period has run. Turnage v. Lally's Swimming Pool Co., 247 Miss. 713, 159 So. 2d 84, 1963 Miss. LEXIS 349 (Miss. 1963).

A claim for compensation by a claimant whose temporary total disability was due to a new back injury which aggravated a prior existing physical impairment was not barred by the one-year statute of limitations set out in this section [Code 1942, § 6998-27]. Fair Stores v. Bryant, 238 Miss. 434, 118 So. 2d 295, 1960 Miss. LEXIS 424 (Miss. 1960).

Payment of medical expenses is a payment of compensation tolling limitation. Graeber Bros., Inc. v. Taylor, 237 Miss. 691, 115 So. 2d 735, 1960 Miss. LEXIS 502 (Miss. 1960).

The one-year period does not begin to run against an employee during his minority. Powe v. Jackson, 236 Miss. 11, 109 So. 2d 546, 1959 Miss. LEXIS 288 (Miss. 1959).

The Workmen's Compensation Law evidences the legislative intent to put the same period of limitations on the payment of medical benefits as has been put on the payment of compensation. Trehern v. Grafe Auto Co., 232 Miss. 854, 100 So. 2d 786, 1958 Miss. LEXIS 339 (Miss. 1958).

5. —After closing of case.

Claimant filed as motion to reopen within the one-year statute of limitations because, as there was an appeal from a final judgment of the Mississippi Workers' Compensation Commission, the claim was not finally rejected, and the statute of limitations did not begin to run, until a final mandate was issued from the appeals process. Huey v. RGIS Inventory Specialists & Fid. & Guar. Ins. Co., 269 So. 3d 362, 2018 Miss. App. LEXIS 196 (Miss. Ct. App.), cert. denied, 258 So. 3d 286, 2018 Miss. LEXIS 522 (Miss. 2018).

Workers' Compensation Commission erred in denying a worker's request to reopen her case as untimely because, while almost a decade had passed since the worker received her final disability payment, the one-year statutory period had not yet been "triggered" where the worker filed her motion to reopen prior to one year after her final compensation payment and the Commission never considered whether the worker established by a preponderance of the evidence that her conditions had changed. Smith v. CompFirst/L.C. Indus., 186 So. 3d 873, 2015 Miss. App. LEXIS 391 (Miss. Ct. App. 2015), cert. denied, 186 So. 3d 854, 2016 Miss. LEXIS 114 (Miss. 2016).

Workers' Compensation Commission erred in determining that an employee's petition to controvert was timely because his employer and its workers' compensation insurer complied with the statutory requirements by twice mailing the employee a Form B-31, providing him an opportunity to sign the Form, and informing him of the time limitations, and upon his failure to sign and return the Form, they provided him with notice, via certified mail, that an unsigned Form had been filed with the Commission. Leggett & Platt v. Brinkley, 150 So. 3d 106, 2014 Miss. App. LEXIS 576 (Miss. Ct. App. 2014).

Denial of the employee's petition for his workers' compensation claim to be reinstated was appropriate because he failed to timely file a petition to reinstate with the Workers' Compensation Commission and the actions taken during the statute-of-limitations period were insufficient to toll the one-year period. Cook v. Home Depot & Am. Home Assur. Co., 81 So. 3d 1126, 2011 Miss. App. LEXIS 18 (Miss. Ct. App. 2011), aff'd, 81 So. 3d 1041, 2012 Miss. LEXIS 70 (Miss. 2012).

The statute of limitations was tolled where the claimant's new attorneys filed a petition for acceptance of representation and entry of appearance in which they noted their intention to represent the claimant in the proceedings before the commission seeking redress for her workplace injury, the petition included as an exhibit a copy of the notice of controversy previously filed by the employer on which the commission had never held a hearing, and the attachment to the notice recited generally that there was a controversy between the parties as to the nature and extent of the claimant's injuries. ABC Mfg. Corp. v. Doyle, 749 So. 2d 43, 1999 Miss. LEXIS 270 (Miss. 1999).

A finding by the Workers' Compensation Commission that there had been a change in conditions warranting the reopening of a case was supported by substantial evidence where the employee testified that his condition had worsened and that additional medical treatment and diagnostic procedures were necessary, the additional treatment and procedures established for the first time a definitive diagnosis of Meniere's Syndrome, the original award of a 5 percent permanent partial disability was made for loss of hearing only, the diagnosis of Meniere's Syndrome was perceived by the Commission to involve more than a simple loss of hearing, and the new order specifically cited a new finding of impairment to the body as a whole with concomitant loss of wage earning capacity. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250, 1991 Miss. LEXIS 763 (Miss. 1991).

One-year limitations period established by § 71-3-53 is measured by reference to claimant's execution and filing of Form B-31, entitled "Report of Payment and Settlement Receipt," and operates to bar cause of action to recover additional compensation after limitations period has expired. Street v. South Carolina Ins. Co., 698 F. Supp. 662, 1988 U.S. Dist. LEXIS 12517 (S.D. Miss. 1988).

The one-year period of limitation provided by this section [Code 1942, § 6998-27] does not begin to run until notice is given to the claimant by the filing of a form B-31 with the commission on behalf of the employer. Empire Home Builders v. Guthrie, 187 So. 2d 17, 1966 Miss. LEXIS 1336 (Miss. 1966).

The filing of Form B-31 with the workmen's compensation commissioner did not start the running of the one-year statute of limitations as to an employee who received no notice of such filing, either from the employer or the commission, and notwithstanding that Form B-5-11 was filed on behalf of employee more than one year after date of accident, the claim should have been considered on its merits. Nichols v. American Creosoting Co., 245 Miss. 414, 146 So. 2d 76, 1962 Miss. LEXIS 561 (Miss. 1962).

The limitations period provided for in this section [Code 1942, § 6998-27] must be considered in connection with subsection (g) of Code 1942, § 6998-19, providing that no case shall be closed without notice to all parties interested and without giving to all such parties an opportunity to be heard. International Paper Co. v. Evans, 244 Miss. 49, 140 So. 2d 271, 1962 Miss. LEXIS 422 (Miss. 1962).

As against a claimant who had refused to sign the final report and settlement receipt submitted to him, the one-year limitation period provided for in this section [Code 1942, § 6998-27] did not begin to run until he had received notice that the employer had filed with the workmen's compensation commission a final report and settlement receipt, properly filled out. International Paper Co. v. Evans, 244 Miss. 49, 140 So. 2d 271, 1962 Miss. LEXIS 422 (Miss. 1962).

Even if a final report and settlement receipt, which was not signed by the claimant, was valid, act of carrier in sending claimant to a doctor for an examination constituted a voluntary reopening of the case, and since no final form closing the case had been filed up to the time the claim had been made, the claim was not barred by limitations. Shainberg's Black & White Store v. Prothro, 238 Miss. 444, 118 So. 2d 862, 1960 Miss. LEXIS 425 (Miss. 1960).

Filing by an insurance carrier of a statement, indicating that a final report previously filed was considered ineffective, tolled the statute of limitations. Graeber Bros., Inc. v. Taylor, 237 Miss. 691, 115 So. 2d 735, 1960 Miss. LEXIS 502 (Miss. 1960).

Where the requirements of subsection (g) of Code 1942, § 6998-19 had been fully complied with by the employer and its insurance carrier, the workmen's compensation commission was without jurisdiction of a claim for compensation made more than 3 years after the closing of the case. Carter v. Wrecking Corp. of America, 234 Miss. 559, 107 So. 2d 116, 1958 Miss. LEXIS 529 (Miss. 1958).

Where a claimant had been paid some medical expenses and compensation benefits and, together with the carrier, had executed a form under which the claim was closed, a claim for additional medical benefits filed nearly four years later was barred by the statute of limitations. Trehern v. Grafe Auto Co., 232 Miss. 854, 100 So. 2d 786, 1958 Miss. LEXIS 339 (Miss. 1958).

Before the statute of limitations provided by this section [Code 1942, § 6998-27] begins to run, there must be a compliance with the mandatory provision of Code 1942, § 6998-19(g). James F. O'Neil, Inc. v. Livings, 232 Miss. 118, 98 So. 2d 148, 1957 Miss. LEXIS 451 (Miss. 1957); Shainberg's Black & White Store v. Prothro, 238 Miss. 444, 118 So. 2d 862, 1960 Miss. LEXIS 425 (Miss. 1960).

This section [Code 1942, § 6998-27] does not apply unless there has been a compliance with Code 1942, § 6998-19(g), which provides that within 30 days after final payment of compensation has been made, employer shall send to the commission a notice stating that final payment has been made, the full amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which the compensation has been paid. Hale v. General Box Mfg. Co., 228 Miss. 394, 87 So. 2d 679, 1956 Miss. LEXIS 526 (Miss. 1956).

It was not the intent of the legislature to require that there be a formal hearing by the commission in order to close employee's claim of voluntary payments, and the fact that no such hearing was held did not render statute which limited period of commencement of suit for additional compensation to within one year after receipt of final payment inapplicable. H. C. Moody & Sons v. Dedeaux, 223 Miss. 832, 79 So. 2d 225, 1955 Miss. LEXIS 445 (Miss. 1955).

Where an employer made voluntary workmen's compensation payments to an injured minor employee, these were valid compensation payments, and the statute limiting power to review voluntary payments to a period of one year after last payment was applicable. H. C. Moody & Sons v. Dedeaux, 223 Miss. 832, 79 So. 2d 225, 1955 Miss. LEXIS 445 (Miss. 1955).

Where a minor employee started a suit for additional compensation which was commenced more than one year after acceptance of last voluntary payment by employer, the action was barred by statute of limitations. H. C. Moody & Sons v. Dedeaux, 223 Miss. 832, 79 So. 2d 225, 1955 Miss. LEXIS 445 (Miss. 1955).

6. —After rejection of claim.

Employee's motion to reinstate a workers' compensation claim on the docket was properly denied where the motion was barred by the one-year statute of limitations; after the employee's claim was dismissed for failure to comply with the procedural rules, the employee waited far more than one year to file the completed pre-hearing statement. Garcia v. Super Sagless Corp., 975 So. 2d 267, 2007 Miss. App. LEXIS 753 (Miss. Ct. App. 2007).

Where decedent's defendants in a worker's compensation proceeding did not timely perfect their appeal to the Circuit Court within the 30 days required by § 71-3-53, that court properly dismissed the case from its docket; the statute is mandatory as to the time when the appeal must be taken. Dependents of Townsend v. Dyer Woodturnings, Inc., 459 So. 2d 300, 1984 Miss. LEXIS 1989 (Miss. 1984).

In an action regarding the denial of workmen's compensation death benefits the circuit court improperly dismissed a petition for appeal, where a motion requesting a review of the evidence by the commission which was filed within the statutory period for appealing the commission's order tolled the time for appeal until the commission entered its order on the motion; the error was harmless, however where the circuit court heard the appeal under the commission's order overruling the motion for review. Johnston v. Hattiesburg Clinic, P.A., 423 So. 2d 114, 1982 Miss. LEXIS 2281 (Miss. 1982).

The one-year statute of limitations applies to the final rejection of a claim for compensation by the supreme court, as well as an appeal from a rejection before the workmen's compensation commission. Pryor v. Woodall Industries, Inc., 250 Miss. 672, 167 So. 2d 920, 1964 Miss. LEXIS 486 (Miss. 1964).

While there is a division of authority as to whether or not the statute of limitations is tolled by the appeal, in view of the provisions of Code 1942, § 6998-26, which must be read and considered in conjunction with this section [Code 1942, § 6998-27], an applicant is entitled to file his application for a review of his compensation claim with the workmen's compensation commission within one year after the judgment of the supreme court finally rejects his claim. Pryor v. Woodall Industries, Inc., 250 Miss. 672, 167 So. 2d 920, 1964 Miss. LEXIS 486 (Miss. 1964).

In proceeding for death benefits, where it was shown that the employee was murdered by a jilted suitor and that the only connection between her employment and the cause of her death was that she was on duty at the time she was shot and was merely informing the slayer of the rules of the telephone company which prohibited visitors in the operating room at the exchange, the commission did not abuse its discretion in refusing to open the case on the grounds of newly discovered evidence, which in general terms alleged that the employee's slayer was insane, particularly since such evidence would not change the result. Estate of West v. Southern Bell Tel. & Tel. Co., 228 Miss. 890, 90 So. 2d 1, 1956 Miss. LEXIS 578 (Miss. 1956).

7. — After dismissal of claim.

When a workers' compensation claim is dismissed because the claimant fails to file a prehearing statement, the claimant has one year from the day that the order of dismissal becomes final in which to move to reopen. Therefore, it was proper to deny a claimant's motion to reopen a workers' compensation case because it was untimely filed more than 20 months after the dismissal became final. Gaillard v. N. Benton Cnty. Health Care, 180 So. 3d 842, 2015 Miss. App. LEXIS 649 (Miss. Ct. App. 2015).

RESEARCH REFERENCES

Am. Jur.

82 Am. Jur. 2d, Workmen's Compensation § 574.

25 Am. Jur. Pl and Pr Forms (Rev), Workmen's Compensation, Forms 1 et seq.

CJS.

101 C.J.S., Workers' Compensation §§ 1493, 1494 et seq.

Law Reviews.

1981 Mississippi Supreme Court Review; Administrative Law. 52 Miss. L. J. 377.

1985 Mississippi Supreme Court Review – Administrative Law. 55 Miss. L. J. 735.

Bradley, Time limitations which bar claims in Mississippi workers' compensation: a re-examination. 62 Miss. L. J. 511.

Higginbotham, Reopening and due process in claims review. 62 Miss. L. J. 609.

§ 71-3-55. Procedure before the commission.

(1) In making an investigation or inquiry or conducting a hearing, the commission shall not be bound by common law or statutory rules of evidence or by technical or formal rules or procedure, except as provided by this chapter, but may make such investigation or inquiry or conduct such hearing in such manner as best to ascertain the rights of the parties. Declarations of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.

(2) Hearings before the commission shall be open to the public and shall be stenographically reported or recorded and transcribed. The commission shall by regulations provide for the preparation of a record of the hearings and other proceedings.

(3) Unless otherwise ordered by the commission, hearings shall be conducted in the county where the injury occurred.

HISTORY: Codes, 1942, § 6998-28; Laws, 1948, ch. 354, § 22; Laws, 1950, ch. 412, § 11; reenacted without change, Laws, 1982, ch. 473, § 28; reenacted without change, Laws, 1990, ch. 405, § 29, eff from and after July 1, 1990.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Open hearings.
3. Evidence.
4. Rebuttal.
5. Review.

1. In general.

Unless denial of compensation is based on matters which are jurisdictional or in abatement, the compensation commission ordinarily should not grant a motion to dismiss where it has not heard all the pertinent evidence. Scott Builders, Inc. v. Dependent of Layton, 244 Miss. 641, 145 So. 2d 165, 1962 Miss. LEXIS 490 (Miss. 1962).

Code 1942, §§ 6998-24 and 6998-28 do not require formal procedure or formal orders, and failure to accompany an order with a finding of fact is not fatal to its validity. Rivers Constr. Co. v. Dubose, 241 Miss. 527, 130 So. 2d 865, 1961 Miss. LEXIS 371 (Miss. 1961).

The Workmen's Compensation Law is not invalid because proceedings before commission are not required to follow rules of evidence or procedure attributed to the courts. Walters v. Blackledge, 220 Miss. 485, 71 So. 2d 433, 1954 Miss. LEXIS 464 (Miss. 1954).

Where insurer took part in first compensation hearing and attorney-referee had rendered no opinion or finding on that hearing, and where an amended application was filed for a second hearing and due notice was given to insurer of such second hearing and he appeared and contested the amended application, the attorney-referee had power to conduct the second hearing. T. H. Mastin & Co. v. Russell, 214 Miss. 700, 59 So. 2d 321, 1952 Miss. LEXIS 509 (Miss. 1952).

In a workman's compensation proceeding the credibility of witnesses was a fact to be determined by the commission. Barry v. Sanders Co., 211 Miss. 656, 52 So. 2d 493, 1951 Miss. LEXIS 396 (Miss. 1951).

2. Open hearings.

Where the Workers' Compensation Commission failed to record and transcribe a hearing pertaining to an assessment against a school district in connection with winding up of the affairs of a workers' compensation fund, a judgment on the assessment would be reversed and the matter would be remanded to the Workers' Compensation Commission with directions to conduct a new hearing on the record. Jackson County Sch. Dist. v. South Miss. Workers' Compensation Fund, 749 So. 2d 962, 1999 Miss. LEXIS 320 (Miss. 1999).

3. Evidence.

Correspondence between employer's counsel and claimant's treating physician was not an impermissible non-consensual ex parte communication because the claimant's counsel was copied on the correspondence requesting clarification of the physician's opinions, but made no objection to the communication or the physician's response in a letter report. Therefore, the administrative judge and the Mississippi Workers' Compensation Commission did not err in considering the physician's letter report. Jones v. Univ. of Miss. Med. Ctr., 309 So. 3d 1135, 2021 Miss. App. LEXIS 7 (Miss. Ct. App. 2021).

Mississippi Workers' Compensation Commission did not abuse its discretion by excluding a vocational report because the vocational expert had passed away by the time of the evidentiary hearing and the claimant had another vocational expert testify on her behalf and introduced that expert's report into evidence. Hayes v. Howard Indus., 284 So. 3d 787, 2019 Miss. App. LEXIS 369 (Miss. Ct. App. 2019).

Mississippi Workers' Compensation Commission did not commit any reversible error by quashing a subpoena issued to a doctor and by failing to record and transcribe the hearing on the issue because the only "hearings" on the employee's subpoena were a telephonic conference with the administrative judge and oral argument on his petition for review by the full Commission; no testimony or other evidence was received during either "hearing." Wright v. Turan-Foley Motors, Inc., 269 So. 3d 160, 2018 Miss. App. LEXIS 35 (Miss. Ct. App. 2018).

Compensation may be allowed for disabling pain in the absence of positive medical testimony as to any physical cause whatever. When the patient complains of pain, the doctor usually takes the fact of pain for granted and the absence of physical findings to account for the pain will not necessarily bar compensation. In such cases, evidence of an accident followed by disabling pain and the absence of evidence as to the cause of the pain from objective medical findings may be sufficient as a basis for compensation, in the absence of circumstances tending to show malingering or indicating that the claimant's testimony as to pain is inherently improbable, incredible, unreasonable or untrustworthy. However, there is a great potential for abuse in claims which are based predominantly upon pain reported by the patient, particularly in circumstances where the patient's testimony or statement to the physician is the sole evidence of its continued presence. In these cases, it would be prudent to obtain additional medical evidence to either support or dispute the claim. Morris v. Lansdell's Frame Co., 547 So. 2d 782, 1989 Miss. LEXIS 336 (Miss. 1989).

The Workers' Compensation Commission, within legal limits, is the sole judge of the weight and sufficiency of the evidence. Evidence which is not contradicted by positive testimony or circumstances, and which is not inherently improbable, incredible, or unreasonable, cannot, as a matter of law, be arbitrarily or capriciously discredited, disregarded or rejected, even though the witness is a party or is interested; unless uncontradicted evidence is shown to be untrustworthy, it is to be taken as conclusive and binding on the triers of fact. Morris v. Lansdell's Frame Co., 547 So. 2d 782, 1989 Miss. LEXIS 336 (Miss. 1989).

The Supreme Court, under its inherent rule-making power, would supplement a previous order of the Workmen's Compensation Commission authorizing the admission of written medical reports and would provide prospective guidelines and safeguards for their use, to insure protection of the adversary system and the principle of non-admission of hearsay evidence under common law directives. Georgia-Pacific Corp. v. McLaurin, 370 So. 2d 1359, 1979 Miss. LEXIS 2048 (Miss. 1979).

Inasmuch as under this section the Commission is not bound by common law or statutory rules of evidence, the admission of an affidavit of claimant's doctor was improper but harmless error, where the affidavit changed nothing which was in the doctor's deposition already in evidence but merely restated his interpretation of claimant's condition, the employer made no effort to impeach the affidavit or to recross-examine the physician, and the doctor had earlier been cross-examined. Dixie Contractors, Inc. v. Ashmore, 349 So. 2d 532, 1977 Miss. LEXIS 2159 (Miss. 1977).

Although the patient-physician communication privilege rule of evidence is not abolished by the Workmen's Compensation Law except insofar as it is specifically provided under Code 1942, § 6998-08, there is, however, under Code 1942, § 6998-28, a grant of authority to the workmen's compensation commission to relax, in its discretion, the traditional common law and statutory rules of evidence in order to obtain a full development of the facts concerning each claim; and, in the instant case the attorney referee did not abuse his discretion in refusing to relax the patient-physician communication privilege in order to let in testimony concerning the claimant's alleged pre-existing injury. Cooper's, Inc. of Mississippi v. Long, 224 So. 2d 866, 1969 Miss. LEXIS 1301 (Miss. 1969).

Testimony given before the commission at a first hearing by the claimant, subsequently deceased, which was corroborated by others who were present and also by his wife, is admissible at a subsequent consolidated hearing of both the decedent's claim and the claim revived in the name of his administratrix and widow and children. Harbert Constr. Corp. v. Dependents of Quimby, 251 Miss. 738, 170 So. 2d 15, 1965 Miss. LEXIS 1166 (Miss. 1965).

The commission should not dismiss a claim at the close of the claimant's evidence, where the case is a close one and all the facts have not been developed. Scott Builders, Inc. v. Dependent of Layton, 244 Miss. 641, 145 So. 2d 165, 1962 Miss. LEXIS 490 (Miss. 1962).

This section [Code 1942, § 6998-28] clearly authorized the admission in evidence of corroborated testimony of witnesses concerning complaints made by a fire spotter of the state forestry commission with respect to the pains he felt in his chest and heart attacks. Schilling v. Mississippi State Forestry Com., 226 Miss. 858, 85 So. 2d 562, 1956 Miss. LEXIS 474 (Miss. 1956).

In a workman's compensation proceeding where the parties had undertaken to enter into a stipulation as to all of the essential facts, it was proper for the attorney referee and the commission to consider their oral testimony of the claimant if it was deemed to be relevant and material. Elliott v. Ross Carrier Co., 220 Miss. 86, 70 So. 2d 75, 1954 Miss. LEXIS 412 (Miss. 1954).

In workmen's compensation cases, the employee has an overall burden of proving facts prerequisite to recovery in every case. T. H. Mastin & Co. v. Mangum, 215 Miss. 454, 61 So. 2d 298, 1952 Miss. LEXIS 585 (Miss. 1952).

The testimony of a claimant is competent to prove his claim. Lucedale Veneer Co. v. Rogers, 211 Miss. 613, 48 So. 2d 148, 1950 Miss. LEXIS 356 (Miss. 1950).

4. Rebuttal.

A claimant who rests his case without introducing medical testimony, in reliance on the employer's notice of intention to call the attending physician, is entitled, where the employer did not do so, to have the case reopened for the purpose of introducing such testimony. Wells-Lamont Corp. v. Watkins, 247 Miss. 379, 151 So. 2d 600, 1963 Miss. LEXIS 311 (Miss. 1963).

Rebuttal evidence is admissible on behalf of claimant after he has rested his case, reserving the right of rebuttal. Fairley v. Harry Bennett Constr. Co., 241 Miss. 707, 133 So. 2d 15, 1961 Miss. LEXIS 387 (Miss. 1961).

This section [Code 1942, § 6998-28] is designed to relax former rules of procedure and entitles a claimant who has rested to introduce rebuttal evidence. Fairley v. Harry Bennett Constr. Co., 241 Miss. 707, 133 So. 2d 15, 1961 Miss. LEXIS 387 (Miss. 1961).

While it is better procedure for a claimant to put on in chief all his testimony necessary to make out a case, the attorney-referee did not clearly abuse his discretion in permitting the claimant to put on rebuttal testimony by a doctor who had previously testified when the claimant had put on his case in chief. Ingalls Shipbuilding Corp. v. King, 229 Miss. 871, 92 So. 2d 196, 1957 Miss. LEXIS 336 (Miss. 1957).

5. Review.

An administrative law judge, as affirmed by the Workers' Compensation Commission and the circuit court, erred as a matter of law when he specifically stated that a hearing on an injured employee's motion to consider the need for additional medical treatment at the employer's expense under General Rule 9 was limited to whether the employee was suffering from improper medical treatment or lack of medical treatment, and then proceeded to make findings on maximum medical recovery and apportionment; an administrative law judge may not announce a limited purpose of a hearing, require the litigants to argue under limitation, and then decide the whole of the case including the time of maximum recovery apportionment and compensation. Monroe v. Broadwater Beach Hotel, 593 So. 2d 26, 1992 Miss. LEXIS 11 (Miss. 1992).

Where a finding of workmen's compensation commission on a disputed question of fact is supported by substantial evidence, the supreme court is not authorized to reverse its judgment. Sones v. Southern Lumber Co., 215 Miss. 148, 60 So. 2d 582, 1952 Miss. LEXIS 547 (Miss. 1952).

The hearing examiner, as a trier of fact, hears the evidence and observes the witness, and his findings of fact and conclusions should be affirmed on judicial review unless manifestly wrong or contrary to the overwhelming weight of the evidence. Brookhaven Steam Laundry v. Watts, 214 Miss. 569, 55 So. 2d 381, 1951 Miss. LEXIS 521 (Miss. 1951).

OPINIONS OF THE ATTORNEY GENERAL

Sections 71-3-55(2) and 71-3-93 leave to the discretion of the Commission the selection of both the method used to create adequate records of its hearings and other proceedings and the determination of which employees are necessary and essential to administering the work of the Commission. Porter, November 22, 1996, A.G. Op. #96-0766.

Any system of reporting or recording which generates a proper transcript of Commission proceedings would satisfy the requirements of 71-3-55(2). And while the Commission must ensure that its proceedings be reported or recorded and transcribed, the statute contains no requirement that the Commission employ and utilize certified or licensed court reporters to do so. Porter, November 22, 1996, A.G. Op. #96-0766.

RESEARCH REFERENCES

ALR.
Admissibility of opinion evidence as to employability on issue of disability in health and accident insurance and workmen's compensation cases. 89 A.L.R.3d 783.

Am. Jur.
82 Am. Jur. 2d, Workmen's Compensation §§ 480 et seq.

CJS.
100A C.J.S., Workers' Compensation §§ 1071 et seq.

§ 71-3-57. Witnesses and their fees.

The commission shall regulate, by rules published and available to the parties, the summoning, attendance, use, and compensation of witnesses, and determine the qualifications of specialists and their scale of fees as expert witnesses. Unless otherwise provided by the commission, witnesses summoned in a proceeding before the commission or whose depositions are taken shall receive the same fees and mileage as witnesses in civil cases in courts of record.

HISTORY: Codes, 1942, § 6998-29; Laws, 1948, ch. 354, § 23; reenacted without change, Laws, 1982, ch. 473, § 29; reenacted without change, Laws, 1990, ch. 405, § 30, eff from and after July 1, 1990.

Cross References — Witness fees, generally, see §§ 25-7-47 et seq.

JUDICIAL DECISIONS

1. In general.
There is no support in the Mississippi Workers' Compensation Act, or in the case law, for the proposition that an employer which itself is free of any wrongdoing can be held liable on an alter-ego theory for its workers' compensation carrier's bad faith failure to pay benefits; the law, in fact, is to the contrary. Toney v. Lowery Woodyards, 278 F. Supp. 2d 786, 2003 U.S. Dist. LEXIS 14180 (S.D. Miss. 2003).

The commission did not abuse its discretion in allowing $100 for the claimant's two medical witnesses. International Paper Co. v. Evans, 293 So. 2d 12, 1974 Miss. LEXIS 1773 (Miss. 1974).

RESEARCH REFERENCES

Am. Jur.
82 Am. Jur. 2d, Workmen's Compensation § 537.

CJS.
100A C.J.S., Workers' Compensation § 1088-1090.

Law Reviews.
1982 Mississippi Supreme Court Review: Administrative Law: Workmen's Compensation. 53 Miss. L. J. 113.

§ 71-3-59. Costs in proceedings brought without reasonable ground; penalties for pursuit of frivolous claim.

(1) If the court having jurisdiction of proceedings in respect of any claim

or compensation order determined that the proceedings in respect of such claim or order have been instituted or continued without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings.

(2) If the full commission determines that proceedings in respect to a claim have been instituted, continued or delayed, including by way of appeal to the commission, without reasonable ground, the full commission shall require the party who has so instituted, continued or delayed such proceedings or the attorney advising such party, or both, to pay the reasonable expenses, including attorney's fees, caused by such institution, continuance or delay to the opposing party. In addition to requiring the payment of reasonable expenses, including attorney's fees, to the opposing party, the commission may levy a civil penalty not to exceed Ten Thousand Dollars ($10,000.00) against such party, or attorney advising or assisting such party, or both, payable to the commission. Any such civil penalty levied and collected by the commission shall be deposited into the Administrative Expense Fund provided for in Section 71-3-97 and any such penalty which is not voluntarily paid may be collected by civil suit brought by the commission.

HISTORY: Codes, 1942, § 6998-30; Laws, 1948, ch. 354, § 24; reenacted without change, Laws, 1982, ch. 473, § 30; Laws, 1987, ch. 361, § 5; reenacted without change, Laws, 1990, ch. 405, § 31; Laws, 1993, ch. 552, § 1, eff from and after passage (approved April 13, 1993).

Cross References — Deposit of civil penalties collected under this chapter to be paid into State General Fund, see § 71-3-97.

JUDICIAL DECISIONS

ANALYSIS

1. Penalties or interest.
2. Sanctions.
3. Attorney's fees.

1. Penalties or interest.

Workers' Compensation Commission order imposing sanctions on the employer and insurer was reversed where they had at least a colorable legal basis for their appeal, i.e., that septic and HVAC systems were not other apparatus that was specially required by the nature of the claimant's injury. Gamma Healthcare Inc. v. Estate of Grantham, — So. 3d —, 2020 Miss. App. LEXIS 666 (Miss. Ct. App. Dec. 1, 2020).

Administrative judge's finding that, although there were inferences throughout the medical records of possible misrepresentation by a claimant, the case was not an appropriate case for the imposition of penalties or interest, because the weight of the evidence did not substantiate this fact, was supported by substantial evidence. Blackwell v. Howard Indus., 243 So. 3d 774, 2018 Miss. App. LEXIS 43 (Miss. Ct. App. 2018).

2. Sanctions.

Because the claimant's counsel was not obligated to do anything further under the Mississippi Workers' Compensation Commission's procedural rules once the claimant's motion to reinstate his claim was timely filed, imposing the $500 sanction for unreasonable delay was inappropriate because there was no breach of an affirmative duty on the part of counsel in not requesting a hearing on the motion to reinstate. Minor v. RGT Mgmt., 271 So. 3d 644, 2018 Miss. App. LEXIS 578 (Miss. Ct. App. 2018).

3. Attorney's fees.

Workers Compensation Commission abused its discretion by ordering the claimant's first attorney to pay attorney's fees to counsel for the employer because nothing that the first attorney filed or did should have "caused" the employer to incur any material expense or attorney's fees and counsel for the employer acknowledged that his client had no "dog in the hunt" and took "no position" with respect to the fee dispute between the first attorney and the claimant's second attorney. The Commission abused its discretion by awarding attorney's fees to the employer when it was not required to do anything but hold funds until an attorney's fee lien was resolved. Foster v. Sanders Constr., 294 So. 3d 115, 2020 Miss. App. LEXIS 107 (Miss. Ct. App. 2020).

Mississippi Workers' Compensation Commission erred by imposing sanctions on an employee's attorney for the subpoena that the attorney served on a doctor and his deposition questioning of the doctor because the possible financial bias of the doctor and his compensation in the litigation were relevant matters the attorney sought to explore by subpoena and deposition; no rules or reported cases clearly prohibited the conduct for which the Commission imposed sanctions. Wright v. Turan-Foley Motors, Inc., 269 So. 3d 160, 2018 Miss. App. LEXIS 35 (Miss. Ct. App. 2018).

Administrative judge's finding that, although there were inferences throughout the medical records of possible misrepresentation by a claimant, the case was not an appropriate case for the imposition of penalties or interest, because the weight of the evidence did not substantiate this fact, was supported by substantial evidence. Blackwell v. Howard Indus., 243 So. 3d 774, 2018 Miss. App. LEXIS 43 (Miss. Ct. App. 2018).

§ 71-3-61. Procedural authority of the commission.

(1) The commission and its hearing officers shall have power to preserve and enforce order during hearings; to issue subpoenas for, to administer oaths to, and to compel the attendance and testimony of witnesses or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things conformable to law which may be necessary to enable them effectively to discharge the duties of their office.

(2) If any person in proceedings before the commission disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the commission shall certify the facts to the court having jurisdiction in the place in which it is sitting, and the court shall thereupon in a summary manner hear the evidence as to the acts complained of and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same condition as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court.

HISTORY: Codes, 1942, § 6998-31; Laws, 1948, ch. 354, § 25; reenacted without change, Laws, 1982, ch. 473, § 31; reenacted without change, Laws, 1990, ch. 405, § 32, eff from and after July 1, 1990.

Cross References — Courts' power to punish contempt generally, see § 9-1-17.

JUDICIAL DECISIONS

ANALYSIS

1. Discovery orders.
2. Departure from procedural rules.
3. Admission of additional evidence.
4. Attorneys.

1. Discovery orders.

Errors occurred when the administrative law judge acted contrary to his ruling at a hearing in which he found that an employee accident report was inadmissible because of discovery violations and when the Mississippi Workers' Compensation Commission chose to disregard the administrative hearing officer's decision as to the enforcement of its own procedural rules; however, the employee could not complain that the Commission's consideration of the employee accident report caused surprise or contend that trial by ambush would have occurred if the administrative hearing officer had allowed the report to be introduced at the hearing because she knew the document existed and what it contained. Thus, although the administrative law judge erred when he reopened the record to admit the employee accident report, the error did not rise to the level of denying the employee due process. Bermond v. Casino Magic, 874 So. 2d 480, 2004 Miss. App. LEXIS 482 (Miss. Ct. App. 2004).

After injured employee sought to compel production in discovery, the administrative law judge acted in accord with his statutory authority when he ordered employer to deliver surveillance videotapes it had made of the injured employee to the employee after the second round of depositions of the employee's doctors as the tapes were delivered to the employee well before his hearing and the employee could have re-deposed any party he wanted, using the tapes, before the hearing, so the employee was not prejudiced. Congleton v. Shellfish Culture, Inc., 807 So. 2d 492, 2002 Miss. App. LEXIS 80 (Miss. Ct. App. 2002).

2. Departure from procedural rules.

Award of workers' compensation benefits to an employee was overturned where, as a result of the Mississippi Workers' Compensation Commission's departure from its own procedural rules, certain medical records were entered into evidence that erroneously provided medical causation relating the employee's focal dystonia to the employee's work as a card dealer for the employer; the mandates of due process were not adhered to by the commission. Robinson Prop. Group v. Newton, 975 So. 2d 256, 2007 Miss. App. LEXIS 676 (Miss. Ct. App. 2007), cert. denied, 984 So. 2d 277, 2008 Miss. LEXIS 284 (Miss. 2008).

3. Admission of additional evidence.

Mississippi Workers' Compensation Commission did not err in denying the motion of the Mississippi Department of Agriculture and Commerce to correct the record and admit additional evidence because substantial evidence supported the Commission's finding that the Department failed to sufficiently explain its tardiness in producing the evidence. Dep't of Agric. v. Austin, 150 So. 3d 994, 2014 Miss. App. LEXIS 649 (Miss. Ct. App. 2014).

4. Attorneys.

Workers' Compensation Commission properly allowed an injured employee's attorney to withdraw and granted a lien for his fees because the Commission was within its express statutory authority when it approved the contract and the lien, declared that the attorney was an agent of the law firm, and that the fee ran to the firm since the employee's contract for services was clearly with the law firm, and not the attorney. Bridgeman v. SBC Internet Servs., 307 So. 3d 481, 2020 Miss. App. LEXIS 134 (Miss. Ct. App.), cert. denied, 308 So. 3d 440, 2020 Miss. LEXIS 515 (Miss. 2020).

RESEARCH REFERENCES

Am. Jur.
82 Am. Jur. 2d, Workers' Compensation §§ 63 et seq.

CJS.
100 C.J.S., Workers' Compensation § 701, 706-714, 717.

§ 71-3-63. Fees for legal and other services.

(1) No claim for legal services or for any other services rendered in respect of a claim or award for compensation, to or on account of any person, shall be valid unless approved by the commission or, if proceedings for review of the order of the commission in respect of such claim or award are had before any court, unless approved by such court. Any claim so approved shall, in the manner and to the extent fixed by the commission or such court, be a lien upon such compensation.

(2) Any person (a) who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the commission or such court, or (b) who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation, shall be guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment not to exceed one (1) year, or by both such fine and imprisonment.

(3) Representation of one other than himself or herself before the commission shall be considered the practice of law, and all statutes applying to and regulating the practice in all other courts of law in this state shall likewise apply to practice before the commission, insofar as the qualifications of those practicing before the commission are concerned. This subsection shall not be construed as tightening the rules of evidence which are otherwise relaxed in other sections of this chapter.

In no instance shall the amount recovered by an attorney for an appearance before the commission exceed twenty-five percent (25%) of the total award of compensation. Such limitations, however, shall not be construed as applying to a fee awarded for additional services by any superior court. Legal services rendered where no motion to controvert has been filed by either employer or employee shall be considered as consultation, and that factor shall be taken into consideration in awarding a fee. Attorneys may not recover attorney's fees based upon benefits voluntarily paid to an injured employee for temporary or permanent disability. Any settlement negotiated by an attorney shall not be considered a voluntary payment. In all instances, fees shall be awarded on the basis of fairness to both attorney and client. Although exceptions may be made in the interest of justice, it shall be deemed conducive to the best interest of all concerned for the commission to approve contracts for attorney's fees voluntarily entered into between attorney and client, within the limitations hereinabove set out.

When an award of compensation becomes final and an attorney's fee is outstanding, a partial lump-sum settlement sufficient to cover the attorney's fee approved therein by the commission shall be made immediately, from payments last to become due, and the deductions allowed by the law shall be borne equally by the attorney and the client.

HISTORY: Codes, 1942, § 6998-32; Laws, 1948, ch. 354, § 26; Laws, 1950, ch. 412, § 12; reenacted without change, Laws, 1982, ch. 473, § 32; reenacted without change, Laws, 1990, ch. 405, § 33; Laws, 2012, ch. 522, § 7, eff from and after July 1, 2012.

Editor's Notes — Laws of 2012, ch. 522, §§ 10 and 11, provide:

"SECTION 10. The Workers' Compensation Commission shall promulgate a written statement specifying the changes made to the Workers' Compensation Law by this act to every employer in this state subject to the Workers' Compensation Law. Within ten (10) days of receipt of this written statement from the Commission, every employer shall post the Commission's statement in a conspicuous place or places in and about his place or places of business and adjacent to the Notice of Coverage as required by Section 71-3-81.

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, and shall apply to injuries occurring on or after July 1, 2012."

Cross References — Limitation of fees in claiming unemployment compensation benefits, see § 71-5-537.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Calculation of fee, generally.
3. —Additional services.
4. —Death of claimant pending final award.

1. In general.

The statutory language that the claimant's attorney was to receive his fee from the payments last to become due could only be met by providing all remaining payments to him, and there was no implied statutory limit that no more than 25 percent of any single periodic payment can be taken from the claimant for such purpose. City of Picayune v. Bennett, 724 So. 2d 1078, 1998 Miss. App. LEXIS 1020 (Miss. Ct. App. 1998).

Supreme Court would not address workers' compensation claimants' argument that salary cap on claimants' attorney fees was unconstitutional, where claimants offered no authority or evidence to support claim. Warren v. Mississippi Workers' Compensation Comm'n, 700 So. 2d 608, 1997 Miss. LEXIS 496 (Miss. 1997).

On affirmance of award made by a circuit court, allowance of attorney's fee, of interest on each installment from its due date, and of statutory damages of five percent on the total of installments due and unpaid from the date of the circuit court's judgment to the date of affirmance by the supreme court, held proper. Central Electric Power Asso. v. Hicks, 236 Miss. 378, 110 So. 2d 351, 112 So. 2d 230, 1959 Miss. LEXIS 330 (Miss. 1959).

The court cannot vary the contract of the parties as to the compensation of an attorney for services. Shivers v. Biloxi-Gulfport Daily Herald, 236 Miss. 303, 110 So. 2d 359, 1959 Miss. LEXIS 320 (Miss. 1959).

The workmen's compensation commission has the power to order a partial commutation of the weekly compensation payment allowed to the dependent of the injured person who died as a result of an accident arising out of and in the course of his employment for the purpose of paying attorney's fees. American Sur. Co. v. Boykin, 212 Miss. 310, 54 So. 2d 398, 1951 Miss. LEXIS 453 (Miss. 1951).

Subsection (j) of Code 1942, § 6998-19, fully authorized the commission, if it thought it was for the best interests of the person entitled to compensation, to commute any part of the future compensation payments into a lump sum, either for the use of the employee's dependent or, as the case may be, for the purpose of paying the attorney's fee. American Sur. Co. v. Boykin, 212 Miss. 310, 54 So. 2d 398, 1951 Miss. LEXIS 453 (Miss. 1951).

The provision of subsection (c) of this section [Code 1942, § 6998-32] has no reference to subsection (k) in § 13, ch. 354, Laws of 1948, as amended by Laws, 1950, ch. 412 (Code 1942, § 6998-19), which provides that if an employer has made advance payments of compensation he shall be entitled to be reimbursed out of any unpaid instalment or installments of compensation due. American Sur. Co. v. Boykin, 212 Miss. 310, 54 So. 2d 398, 1951 Miss. LEXIS 453 (Miss. 1951).

2. Calculation of fee, generally.

The supreme court would allow the claimant's counsel one third of the compensation recovered. Davis v. Clark-Burt Roofing Co., 238 Miss. 464, 119 So. 2d 926, 1960 Miss. LEXIS 429 (Miss. 1960).

Amounts paid before the controversy arose are to be excluded from the basis upon which the attorney's percentage is calculated. Mullins & Parker v. Rucker, 237 Miss. 330, 115 So. 2d 535, 1959 Miss. LEXIS 474 (Miss. 1959).

Counsel for claimant was allowed as a fee for his services one third of the total amount collected in the case. Grubbs v. Revell Furniture Co., 234 Miss. 319, 106 So. 2d 390, 1958 Miss. LEXIS 494 (Miss. 1958).

An attorney's fee of 331/3 percent of the amount of the recovery was allowed to claimants' attorney for all services rendered in the case. Pennington v. Smith, 232 Miss. 775, 100 So. 2d 569, 1958 Miss. LEXIS 328 (Miss. 1958).

Employee's motion for allowance of attorneys' fees sustained and fixed at 331/3 percent of all compensation recovered, for all services rendered by counsel. Russell v. Southeastern Utilities Service Co., 230 Miss. 272, 92 So. 2d 544, 1957 Miss. LEXIS 368 (Miss. 1957).

Fees for all services of a claimant's attorney in workmen's compensation cases should not exceed 331/3 percent of the sum recovered. Prince v. Nicholson, 229 Miss. 718, 91 So. 2d 734, 1957 Miss. LEXIS 318 (Miss. 1957).

Where an insurer of an employer made contracts subject to the workmen's compensation statute, the insurer could not object that the statute was unconstitutional in authorizing an immediate award for claimant's attorney of 25 percent of amount of compensation which would be paid if permanent partial disability should run for the full period, holding that such lump sum allowance for the attorney was properly based on assumption that the disability would continue for the full 450-week period. Jim Nix Cafeteria v. Burton, 226 Miss. 206, 84 So. 2d 164, 1955 Miss. LEXIS 625 (Miss. 1955).

3. —Additional services.

On joint motion of the parties, and on motion of claimant's attorney, the supreme court would remand to the workmen's compensation commission for its consideration and approval of the proposed negotiated settlement, and for the allowance of attorneys' fee to the claimant's attorney in an amount not to exceed 331/3 percent of any and all compensation recovered on behalf of claimant. Kelly v. Greif Bros. Cooperage Corp., 251 Miss. 34, 167 So. 2d 814, 1964 Miss. LEXIS 324 (Miss. 1964).

The supreme court would sustain motion of claimant's attorney for the allowance of attorney's fee of 331/3 percent of the amount of the recovery with the understanding that such fee would cover all services rendered in all courts and before the workmen's compensation commission. Smith v. Crown Rigs, Inc., 245 Miss. 311, 148 So. 2d 195, 1963 Miss. LEXIS 521 (Miss. 1963).

Basis of attorney's fee to one obtaining reversal of denial of death benefits held to be benefits which accrued prior to the entry of an order or allowance, plus value of future benefits, but excluding the lump sum of $100 provided by statute, and funeral expenses. Goodnite v. Farm Equipment Co., 234 Miss. 342, 103 So. 2d 391, 1958 Miss. LEXIS 563 (Miss. 1958).

Upon the affirmance of an award of workmen's compensation payments to the deceased employee's parents, who were found to be partially dependent upon the employee, claimant's motion for five percent statutory damages, and six percent interest on all installments which then had become due and remained unpaid, was sustained, as was their motion for attorneys' fees in the amount of one third of the award. Mid-State Paving Co. v. Farthing, 233 Miss. 333, 101 So. 2d 850, 1958 Miss. LEXIS 386 (Miss. 1958).

Where the commission had allowed claimant's attorneys a fee of 25 percent of all the compensation payments awarded, the supreme court approved a contract allowing an additional fee equal to eight and one third percent of the amount of the award upon claimant's motion following an affirmance of the commission's award. Kahne v. Robinson, 232 Miss. 670, 100 So. 2d 132, 100 So. 2d 585, 1958 Miss. LEXIS 315, 1958 Miss. LEXIS 316 (Miss. 1958).

Motion by claimant's counsel for an increase in fees was allowed so as to total 331/3 percent of the amount recovered for all services rendered where counsel had a written contract under which they were entitled to 25 percent of the amount recovered without an appeal, and 331/3 percent of the amount recovered in case of appeal, which contract had been approved by the commission. Nicholas Co. v. Dodson, 232 Miss. 569, 99 So. 2d 666, 1958 Miss. LEXIS 304 (Miss. 1958).

Where the record disclosed that claimant's attorneys had been allowed a fee of 25 percent for services rendered to claimant before the attorney-referee, the commission and the circuit court, upon motion, additional attorneys' fees were allowed in an amount which when added to the 25 percent would equal a total fee of 331/3 percent of the amount recovered, for all services. B. C. Rogers & Sons v. Reeves, 232 Miss. 309, 98 So. 2d 875, 1957 Miss. LEXIS 477 (Miss. 1957).

A claimant who was awarded only permanent partial disability benefits, whereas he was entitled to recover temporary total disability benefits until such time as he should recover from an operation and attain maximum recovery, was, upon motion, entitled to an allowance of additional attorney's fees in an amount not to exceed 331/3 percent of the amount of compensation awarded. Houston Contracting Co. v. Reed, 231 Miss. 213, 95 So. 2d 231, 1957 Miss. LEXIS 507 (Miss. 1957).

Where claimant's attorneys had agreed to represent claimant before the workmen's compensation commission for a fee in the sum of 25 percent of the total amount of a compensation awarded, and after successfully representing claimant before the commission, the attorneys successfully represented him in the circuit court and supreme court, the attorneys were entitled to a fee which, when added to the 25 percent contracted for, would not exceed the total fee for all services in the case of 331/3 percent of the total recovery that might be had under the award. Jackson Ready-Mix Concrete v. Young, 230 Miss. 644, 93 So. 2d 645, 1957 Miss. LEXIS 405 (Miss. 1957).

Where a motion filed by a claimant and his attorney asking the supreme court to approve a contract between them, by which the attorney would receive 50 percent of the amount recovered by the claimant, disclosed that the attorney had performed an unusual amount of legal work in a case, the contract was approved so as to allow the attorney a fee of only 331/3 percent of the total amount recovered by the claimant. Mandle v. Kelly, 229 Miss. 327, 92 So. 2d 246, 1957 Miss. LEXIS 303 (Miss. 1957).

Where an award to a widow for death benefits was affirmed by the supreme court, the attorney was entitled, as full compensation for all services rendered, to a fee in a sum equal to 331/3 percent of all death benefits which accrued prior to the entry of an order, plus a sum of money equal to a partial lump sum settlement of 331/3 percent of the present value of all future death benefits, such partial lump sum settlement to be determined and computed as provided by Code 1942, § 6998-19(j) and to be deducted from payments last to become due the claimants. Prentiss Truck & Tractor Co. v. Spencer, 228 Miss. 66, 87 So. 2d 272, 88 So. 2d 99, 1956 Miss. LEXIS 486, 1956 Miss. LEXIS 487 (Miss. 1956).

Limitation of 25 percent for attorneys fees is not applicable for additional services rendered before superior courts.

Sunnyland Contracting Co. v. Davis, 221 Miss. 744, 74 So. 2d 858, 1954 Miss. LEXIS 587 (Miss.), modified, 221 Miss. 744, 75 So. 2d 923, 1954 Miss. LEXIS 589 (Miss. 1954).

Where attorneys for claimants of death benefits successfully prosecuted claim before workmen's compensation commission, the circuit court, and the supreme court, they were entitled to a fee of 331/3 percent of the amount recovered, notwithstanding a contract for a fee of 50 percent. Sunnyland Contracting Co. v. Davis, 221 Miss. 744, 74 So. 2d 858, 1954 Miss. LEXIS 587 (Miss.), modified, 221 Miss. 744, 75 So. 2d 923, 1954 Miss. LEXIS 589 (Miss. 1954).

In a workmen's compensation proceeding the amount of attorney's fee which amounted to 40 percent of the total compensation award paid to the claimant is fair and just for legal services rendered by the attorney in respect of claim before the commission and for the additional services rendered by the attorney on two appeals. Hill v. United Timber & Lumber Co., 68 So. 2d 420 (Miss. 1953).

4. —Death of claimant pending final award.

Where claimant died during the pending of a suggestion of error before the supreme court, the attorney's fee is to be figured upon the amount accrued and due at claimant's death, rather than the full amount of the award in the supreme court's decision. Oden Constr. Co. v. Tyler, 247 Miss. 21, 153 So. 2d 294, 1963 Miss. LEXIS 278 (Miss. 1963).

Where claimant died pending an appeal in which the award was affirmed, the court can base its award of an attorney's fee only on the amount accrued prior to claimant's death. L. B. Priester & Son v. McGee, 234 Miss. 471, 106 So. 2d 394, 1958 Miss. LEXIS 520 (Miss. 1958).

RESEARCH REFERENCES

ALR.

Handling, preparing, presenting, or trying workmen's compensation claims or cases as practice of law. 2 A.L.R.3d 724.

Workmen's compensation: attorney's fee or other expenses of litigation incurred by employee in action against third party tortfeasor as charge against employer's distributive share. 74 A.L.R.3d 854.

Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

Workers' compensation: availability, rate, or method of calculation of interest on attorney's fees or penalties. 79 A.L.R.5th 201.

Am. Jur.

82 Am. Jur. 2d, Workers' Compensation §§ 604, 605.

25 Am. Jur. Pl and Pr Forms (Rev), Workmen's Compensation, Forms 1 et seq.

CJS.

101 C.J.S., Workers' Compensation §§ 1440 et seq.

§ 71-3-65. Record of injury or death.

Every employer shall keep a record in respect of any injury to an employee. Such record shall contain such information of disability or death in respect of such injury as the commission may by regulation require, and shall be available to inspection by the commission or by any state authority at such times and under such conditions as the commission may by regulation prescribe.

HISTORY: Codes, 1942, § 6998-33; Laws, 1948, ch. 354, § 27; reenacted without change, Laws, 1982, ch. 473, § 33; reenacted without change, Laws, 1990, ch. 405, § 34, eff from and after July 1, 1990.

RESEARCH REFERENCES

CJS.
101 C.J.S., Workers' Compensation §§ 1583-1586.

§ 71-3-66. Confidentiality of records.

The noncontroverted case medical reports, rehabilitation counselor reports and psychological reports of the commission, insofar as they refer to accidents, injuries and settlements, shall not be open to the public under the Mississippi Public Records Act of 1983, but only to the parties satisfying the commission of their interest in such records and the right to inspect them. Under such reasonable rules and regulations as the commission may adopt, the records of the commission as to any employee in any previous case in which such employee was a claimant shall be open to and made available to such claim to an employer or its insurance carrier which is called upon to pay compensation, medical expenses and/or funeral expenses, or to any party at interest, except that the commission may make such reasonable charge as it deems proper for furnishing information by mail and for copies of records.

HISTORY: Laws, 1984, ch. 369; reenacted without change, Laws, 1990, ch. 405, § 35, eff from and after July 1, 1990.

§ 71-3-67. Reports of injuries.

(1) Within ten (10) days after the fatal termination of any injury, the employer, if self-insured, or its carrier, shall file a report thereof with the commission on a form approved by the commission for this purpose.

In the event of an injury which shall cause loss of time in excess of the waiting period prescribed in Section 71-3-11, a report thereof shall be filed with the commission by the employer or carrier, on a form approved by the commission for this purpose, within ten (10) days after the prescribed waiting period has been satisfied.

Within ten (10) days after the employer or carrier knows, or reasonably should know, that an injury has resulted, or likely will result, in permanent disability or serious head or facial disfigurement, but which does not cause a loss of time in excess of the prescribed waiting period, a report thereof shall be filed with the commission on a form approved by the commission for this purpose.

(2) Injuries not otherwise provided for in this section, and for which only medical benefits are due, are not required to be reported to the commission. Records of such injuries shall be maintained by the employer, if self-insured, or its carrier, and shall contain the name and address of the employee, the date of the accident, the name and address of the employer, the nature of the injury, the number of days lost and the total medical expense. These records shall be made available to the commission upon request.

If an injury provided for in this subsection subsequently causes a loss of time in excess of the prescribed waiting period, or causes permanent disability or serious head or facial disfigurement, it shall be reported within ten (10) days thereafter on the form approved for such claims.

Any additional reports shall be sent to the commission in such time and in such manner as the commission may prescribe.

(3) Filing may be by mail, electronic means or other form of delivery reasonably calculated to accomplish receipt by the commission. Any such report required to be filed hereunder shall be considered filed on the date of mailing, if filing is by mail, and on the date the electronic equipment being used acknowledges receipt of the material, if filing is by electronic means. Otherwise, the date of filing shall be the date of receipt by the commission.

(4) Whenever an employer or carrier fails or refuses to file any report required by this section within the time prescribed, the commission may, in its discretion, and after giving the employer or carrier notice and an opportunity to show cause to the contrary, levy a penalty against such employer or carrier not to exceed One Hundred Dollars ($100.00). This penalty shall be payable to the Administrative Expense Fund provided for by this chapter, and if not voluntarily paid, may be collected by civil suit brought by the commission.

In addition to the above civil penalty, a sum not to exceed One Hundred Dollars ($100.00) may, in the discretion of an administrative judge or the commission, be added to any award which may be made as a result of any injury not timely reported hereunder.

HISTORY: Codes, 1942, § 6998-34; Laws, 1948, ch. 354, § 28; Laws, 1950, ch. 412, § 13; reenacted without change, Laws, 1982, ch. 473, § 34; reenacted without change, Laws, 1990, ch. 405, § 36; Laws, 1995, ch. 582, § 1, eff from and after July 1, 1995.

Cross References — Administrative Expense Fund, see § 71-3-97.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Miscellaneous.

1. In general.

Because the claimants did not apply for workers' compensation benefits within two years of their injuries, their claims were time-barred by the statute of limitations. Moreover, the employer was not estopped from asserting the statute of limitations as a defense in that the employer did not fail to timely file notice of the claimants' injury under the reporting statute. McInturff v. Yellow Ry. Corp., — So. 3d —, 2019 Miss. App. LEXIS 169 (Miss. Ct. App. Apr. 23, 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 467 (Miss. 2019), cert. denied, 283 So. 3d 733, 2019 Miss. LEXIS 427 (Miss. 2019).

Employee was estopped from asserting the statute of limitations, Miss. Code Ann. § 71-3-35(1), as a defense because the employer failed to comply with the notice requirements of Miss. Code Ann. § 71-3-67(1), and the employee testified that he did not file a claim for workers' compensation because he was under the impression that the employer had filed it for him. Prentice v. Schindler Elevator Co., 13 So. 3d 1258, 2009 Miss. LEXIS 288 (Miss. 2009).

Worker had missed five days of work due to a work-related injury; therefore, the employer was required to file a notice of injury report, and by not filing the notice, the employer could not rely on the statute of limitations as a defense. Prentice v. Schindler Elevator Co., 14 So. 3d 59, 2008 Miss. App. LEXIS 376 (Miss. Ct. App. 2008).

Employer was estopped from claiming that two-year statute of limitations on workers' compensation claim was not tolled, where employer failed to timely file statutorily-required notice of fatal termination of injury. Holbrook by & Through Holbrook v. Albright Mobile Homes, 703 So. 2d 842, 1997 Miss. LEXIS 636 (Miss. 1997).

The circuit court erred in awarding the claimant a penalty under subd (4) of this section where the court, and not the commission, awarded compensation, and the case was remanded to the commission to determine the propriety of awarding the penalty. Huffman v. State, 324 So. 2d 759, 1976 Miss. LEXIS 1973 (Miss. 1976).

The allowance of a penalty for failure of the employer to report the injury is discretionary with the commission. Gulf Park College v. Wheeler, 237 Miss. 155, 113 So. 2d 666, 1959 Miss. LEXIS 458 (Miss. 1959).

The court will not determine whether a penalty should have been allowed for failure of the employer to report the injury where no request therefor was made to the commission. Gulf Park College v. Wheeler, 237 Miss. 155, 113 So. 2d 666, 1959 Miss. LEXIS 458 (Miss. 1959).

2. Miscellaneous.

Doctrines of quasi-estoppel and equitable estoppel did not bar a company from denying that a worker was an independent contractor because the worker failed to articulate how he relied to his detriment on any representation by the company to show that it took inconsistent positions and that the company benefitted from any inconsistent position; the company's failure to file a timely notice of the worker's injury did not estop it from raising the exclusive remedy provision as a defense. Fortner v. Specialty Contr., LLC, 217 So. 3d 736, 2017 Miss. App. LEXIS 54 (Miss. Ct. App. 2017).

Employee's workers' compensation claim was barred by the statute of limitations and the employer was not required to report the employee's injury to the Workers' Compensation Commission under Miss. Code Ann. § 71-3-67. The employee missed approximately four hours of work as a result of the injury and there was no indication that the employer had any reason to suspect that the employee had sustained a permanent disability; there was also no indication that she suffered a serious head or facial disfigurement as a result of the fall. Murray v. Ingalls Shipbuilding/NGSS, 35 So. 3d 561, 2010 Miss. App. LEXIS 249 (Miss. Ct. App. 2010).

Employer and its carrier were not equitably estopped from asserting a statute of limitations defense for a workers' compensation claim because under Miss. Code Ann. §§ 71-3-67(1) and 71-3-11, the employer was not required to file a first notice of injury in that it had no reason to conclude that the claimant suffered a compensable injury in that the claimant had attributed his back pain to a prior back injury that was not work-related. Bynum v. Anderson Tully Lumber Co., 996 So. 2d 814, 2008 Miss. App. LEXIS 702 (Miss. Ct. App. 2008).

RESEARCH REFERENCES

ALR.

Excessiveness or adequacy of damages awarded for injuries to head or brain. 50 A.L.R.5th 1.

Am. Jur.

82 Am. Jur. 2d, Workers' Compensation § 378.

25 Am. Jur. Pl & Pr Forms (Rev), Workmen's Compensation, Forms 161-164.

CJS.

101 C.J.S., Workmen's Compensation § 1583-1586.

§ 71-3-69. Penalty for misrepresentation.

Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining or wrongfully withholding any benefit or payment under this chapter is guilty of a felony and on conviction thereof may be punished by a fine of not to exceed Five Thousand Dollars ($5,000.00) or double the value of the fraud, whichever is greater, or by imprisonment not to exceed three (3) years, or by both fine and imprisonment.

HISTORY: Codes, 1942, § 6998-35; Laws, 1948, ch. 354, § 29; reenacted without change, Laws, 1982, ch. 473, § 35; reenacted without change, Laws, 1990, ch. 405, § 37; Laws, 1995, ch. 598, § 1, eff from and after July 1, 1995.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 71-3-71. Compensation for injuries where third parties are liable.

The acceptance of compensation benefits from or the making of a claim for compensation against an employer or insurer for the injury or death of an employee shall not affect the right of the employee or his dependents to sue any other party at law for such injury or death, but the employer or his insurer shall be entitled to reasonable notice and opportunity to join in any such action or may intervene therein. If such employer or insurer join in such action, they shall be entitled to repayment of the amount paid by them as compensation and medical expenses from the net proceeds of such action (after deducting the reasonable costs of collection) as hereinafter provided.

The commencement of an action by an employee or his dependents (or legal representative) against a third party for damages by reason of the injury, or the adjustment of any such claim, shall not affect the right of the injured employee or his dependents (or legal representative) to recover compensation, but any amount recovered by the injured employee or his dependents (or legal representative) from a third party shall be applied as follows: reasonable costs of collection as approved and allowed by the court in which such action is pending, or by the commission of this state in case of settlement without suit, shall be deducted; the remainder, or so much thereof as is necessary, shall be used to discharge the legal liability of the employer or insurer; and any excess shall belong to the injured employee or his dependents. The employee or his dependents bringing suit against the third party must notify the employer or carrier within fifteen (15) days of the filing of such suit.

An employer or compensation insurer who shall have paid compensation benefits under this chapter for the injury or death of the employee shall have the right to maintain an action at law against any other party responsible for such injury or death, in the name of such injured employee or his beneficiaries, or in the name of such employer or insurer, or any or all of them. If reasonable notice and opportunity to be represented in such action by counsel shall have been given to the compensation beneficiary, all claims of such compensation beneficiary shall be determined in such action, as well as the claim of the employer or insurer. If recovery shall be had against such other party, by suit or otherwise, the compensation beneficiary shall be entitled to any amount recovered over and above the amount that the employer and insurer shall have paid or are liable for in compensation or other benefits, after deducting the reasonable costs of collection.

In case of settlement of any action before the trial thereof, such settlement shall be subject to the approval of the court wherein such action is pending, and settlement before an action is brought shall be subject to the approval of the commission. Distribution of the portion belonging to the dependents shall be made among such dependents in the manner provided in this chapter.

In case of liability of the employer or insurer to make payment to the state treasury under the second injury fund provisions, if the injury or death creates a legal liability against a third party, the employer or insurer shall have a right of action against such third party for reimbursement of any sum so paid into the state treasury, which right may be enforced in the action heretofore provided or by an independent action.

HISTORY: Codes, 1942, § 6998-36; Laws, 1948, ch. 354, § 30; reenacted without change, Laws, 1982, ch. 473, § 36; reenacted without change, Laws, 1990, ch. 405, § 38, eff from and after July 1, 1990.

Editor's Notes — The name of the Second Injury Fund, referenced in the last paragraph, was changed to the Second Injury Trust Fund by Section 27 of Chapter 7, 2017 1st Extraordinary Session, effective June 23, 2017.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Right of action against third person.
3. Parties to action.
4. Evidence of compensation.
5. Settlement.
6. Disbursement of money recovered.
7. —Legal services.

1. In general.

Miss. Code Ann. § 71-3-71 gives a carrier the right to intervene in a related lawsuit and also prevents a covered employee from gaining a double recovery if the employee receives benefits from a third party; however, the ability of a workers' compensation carrier to recover insurance proceeds has been limited by case law. Miss. Ins. Guar. v. Blakeney, 51 So. 3d 208, 2009 Miss. App. LEXIS 870 (Miss. Ct. App. 2009), rev'd, 54 So. 3d 203, 2011 Miss. LEXIS 28 (Miss. 2011).

The right of an employer or insurer to recover under this section is not conditioned upon a lack of blameworthiness of the employer in the causation of the injury. Mississippi Food & Fuel Workers' Compensation Trust v. Tackett, 778 So. 2d 136, 2000 Miss. App. LEXIS 134 (Miss. Ct. App. 2000).

Where statute containing "benefits coordination" provision allowing employers to decrease workers compensation benefits to disabled employees who are eligible to receive wage loss compensation from other employer-funded sources did not specify whether provisions applied to workers injured prior to its effective date, and to nullify state Supreme Court decision holding that provision applied to such workers, state legislature passed into law statute requiring employers to pay to disabled employees workers compensation benefits that had been withheld in reliance on coordination statute, statute did not violate contract clause by substantially impairing obligation of employment contracts entered into after collective bargaining between employers and employees, nor did it, as result of retroactive payment provision, violate due process clause, since retroactive payment provision was rational means of meeting legitimate legislative purpose of correcting state court decision. General Motors Corp. v. Romein, 503 U.S. 181, 112 S. Ct. 1105, 117 L. Ed. 2d 328, 1992 U.S. LEXIS 1535 (U.S. 1992).

An employer's workers' compensation carrier could not seek recovery under § 71-3-71 from an uninsured motorist claim asserted by an injured employee against the employer's uninsured motorist carrier. Cossitt v. Nationwide Mut. Ins. Co., 551 So. 2d 879, 1989 Miss. LEXIS 318 (Miss. 1989), overruled in part, Meyers v. Am. States Ins. Co., 914 So. 2d 669, 2005 Miss. LEXIS 322 (Miss. 2005).

Neither employer nor employee is third party within meaning of act, because intent of legislature in enacting § 71-3-71 was to prevent employee from obtaining double recovery for injuries sustained in compensable accident; to allow claimant to successfully settle common-law action and also proceed under workers' compensation act would allow double recovery from employer for same injury, which would violate purpose of act. Sawyer v. Head, 510 So. 2d 472, 1987 Miss. LEXIS 2427 (Miss. 1987).

In a third party suit by a workman against his employer's compensation carrier, the court stated that the merged identity of employer and carrier is clearly limited to matters of compensation payments and cannot be so construed to take away an employee's common law action against a third party tortfeasor. Stacy v. Aetna Casualty & Surety Co., 334 F. Supp. 1216, 1971 U.S. Dist. LEXIS 10847 (N.D. Miss. 1971), disapproved, Kifer v. Liberty Mut. Ins. Co., 777 F.2d 1325, 1985 U.S. App. LEXIS 24112 (8th Cir. 1985).

Where a Mississippi carrier paid compensation to a Mississippi employee who was injured while working in Alabama, the applicable substantive law determining the carrier's subrogation rights in a personal injury action by the employee against a third party was Mississippi law under which compensation was paid. McDonald v. E. J. Lavino Co., 430 F.2d 1065, 1970 U.S. App. LEXIS 7906 (5th Cir. Ala. 1970).

This provision does not impose an unreasonable and unconstitutional limitation upon the right to contract. Smith v. Bush, 312 F.2d 131, 1963 U.S. App. LEXIS 6497 (5th Cir. Miss. 1963).

Failure to notify employer of an action against a third party tort feasor does not bar prosecution of claim for compensation. Bush v. Dependents of Byrd, 234 Miss. 782, 108 So. 2d 211, 1959 Miss. LEXIS 555 (Miss. 1959).

2. Right of action against third person.

Because Mississippi Insurance Guaranty Association (MIGA) stepped into the shoes of an insolvent carrier and was bound by the rights, duties, and obligations of the insolvent insurer, it was not entitled to a credit for collection costs under that the insured received from her employer's uninsured motorist coverage; such recovery was explicitly forbidden under Miss. Code Ann. § 71-3-71(1), and MIGA's contentions that it should be bound only by the Mississippi Insurance Guaranty Association Law were without merit; nothing in the language of Miss. Code Ann. § 83-23-123(1) indicated that its provisions superseded any other law regarding a carrier's right to recovery. Miss. Ins. Guar. v. Blakeney, 51 So. 3d 208, 2009 Miss. App. LEXIS 870 (Miss. Ct. App. 2009), rev'd, 54 So. 3d 203, 2011 Miss. LEXIS 28 (Miss. 2011).

Trial court erred in denying an employer's and insurers' request to intervene in an employee's negligence action against a doctor and a medical corporation. The employer and the insurers were entitled to intervene because the employee's paraplegia, which occurred after back surgery, was proximately caused by her on-the-job injury; moreover, the trial court was required to approve an settlement that was reached among the parties. Miss. Ins. Guar. Ass'n v. Brewer, 922 So. 2d 807, 2005 Miss. App. LEXIS 484 (Miss. Ct. App. 2005), cert. denied, 927 So. 2d 750, 2006 Miss. LEXIS 126 (Miss. 2006).

Subcontractor working under prime contractor is not immune from suit for accidental injury to employee of fellow contractor working on same job, because such subcontractor cannot benefit from exclusive remedy provision because it is "any other party" subject to suit at common law under § 71-3-71. Estate of Morris v. W. E. Blain & Sons, Inc., 511 So. 2d 945, 1987 Miss. LEXIS 2698 (Miss. 1987).

Utility is third party against which wrongful death claims may be filed on basis of electrocution death of employee of contractor while trimming and cutting tops from trees under and around utility's high voltage powerline. Falls v. Mississippi Power & Light Co., 477 So. 2d 254, 1985 Miss. LEXIS 2215 (Miss. 1985).

A wrongful death action was properly dismissed as against certain of decedent's fellow employees where the decedent was covered by the Workmen's Compensation Act; as to decedent's employer and its insurer, the trial court erred in not granting their demurrers and motions to dismiss where the employer, under § 71-3-9, was not subject to suit and where the declaration, which only sought to have the insurer assert any claim it might have, did not state a cause of action against the insurer; the trial court also erred in setting a thirty day limit within which the employer and its insurer were required to exercise their option to intervene in the suit as party plaintiffs based on their having paid benefits to decedent's widow. McCluskey v. Thompson, 363 So. 2d 256, 1978 Miss. LEXIS 2183 (Miss. 1978).

Workmen's compensation commission order approving settlement of disputed compensation claim between employee and employer-carrier pursuant to Code 1972, § 71-3-29 and authorizing execution of any document required by employer-carrier "to evidence their release, acquittal and discharge herein," did not impliedly sanction the release of the employee's third-party rights, and the release so authorized could not validly effect any rights the employee might have against third parties. Hague v. Liberty Mut. Ins. Co., 504 F.2d 364, 1974 U.S. App. LEXIS 6014 (5th Cir. Miss. 1974).

The fact that the plaintiff's employer, a self-insurer under the Workmen's Compensation Law, had paid his hospital and medical expenses did not deprive plaintiff of his right to seek recovery from a third party tortfeasor of that portion of such expenses as he might be able to show were reasonable and necessary in the light of his injury, even though such recovery was subject to his employer's subrogation demand. Bedwell v. Riddle, 345 F.2d 183, 1965 U.S. App. LEXIS 5650 (5th Cir. Miss. 1965).

The employee of an agent, operating a car rental business on behalf of his principal, is also the employee of the principal and could not, after receiving compensation benefits, maintain a third-party action against the principal. Robertson v. Stroup, 254 Miss. 118, 180 So. 2d 617, 1965 Miss. LEXIS 934 (Miss. 1965).

That both the corporation sued as the negligent third party and the employer corporation are owned by the same persons does not preclude suit. Index Drilling Co. v. Williams, 242 Miss. 775, 137 So. 2d 525, 1962 Miss. LEXIS 593 (Miss. 1962).

An action for personal injuries may be maintained although defendant and plaintiff's immediate employer are engaged in a common project. Clark v. Luther McGill, Inc., 240 Miss. 509, 127 So. 2d 858, 1961 Miss. LEXIS 481 (Miss. 1961).

3. Parties to action.

Owner of a petroleum refinery plant was not immune from a negligence action filed by a contractor's employee, and thus, it was subject to the employee's tort claim as "any other party," because it was not statutory employer of the employee; the owner had no duty as an employer or contractor to secure workers' compensation insurance, and its act of voluntarily purchasing coverage did not change its status. Thomas v. Chevron U.S.A., Inc., 212 So. 3d 58, 2017 Miss. LEXIS 27 (Miss. 2017).

With respect to an employer's or workers' compensation insurer's right to subrogation, Miss. Code Ann. § 71-3-71 allows them to either join or intervene in a third party action filed by an injured worker, and either will suffice to protect the insurer's or employer's right to reimbursement. Liberty Mut. Ins. Co. v. Shoemake, 111 So. 3d 1207, 2013 Miss. LEXIS 190 (Miss. 2013).

Workers' compensation insurer could not file a separate subrogation action under Miss. Code Ann. § 71-3-71 against an injured worker after he settled a third-party action in Alabama and reimbursed the insurer only the amount it was entitled to under Alabama law, as the insurer had notice of the action but did not join or intervene in that suit. Liberty Mut. Ins. Co. v. Shoemake, 111 So. 3d 1207, 2013 Miss. LEXIS 190 (Miss. 2013).

A workers' compensation carrier was not required to join in the employee's personal injury action prior to the time settlement was made in the trial in order to be entitled to receive any of the settlement proceeds under the Mississippi Workers' Compensation Act (§§ 71-3-1 et seq). Sneed v. Verdun, 611 So. 2d 947, 1992 Miss. LEXIS 834 (Miss. 1992).

The trial court was in error in not allowing an employer to intervene in the third party action brought by the heirs at law of the deceased employee against the third party tortfeasor, in order to recover the benefits actually paid by the employer under the requirements of the workmen's compensation law. Litton Systems, Inc. v. Murphree, 301 So. 2d 850, 1974 Miss. LEXIS 1667 (Miss. 1974).

Under the provisions of this section [Code 1942, § 6998-36], employer's insurance carrier which has paid compensation benefits to dependents of deceased employee possessed a right of subrogation against a third-party tortfeasor and was entitled to intervene in an action brought by decedent's widow against the third-party tortfeasor. Smith Petroleum Service, Inc. v. Monsanto Chemical Co., 420 F.2d 1103, 1970 U.S. App. LEXIS 11327 (5th Cir. Miss. 1970).

Intervention on the part of an insurance carrier in an action brought to recover damages for the wrongful death of an employee is not required by law but is optional on the part of the carrier. Kidwell v. Gulf, M. & O. R. Co., 251 Miss. 152, 168 So. 2d 735, 1964 Miss. LEXIS 335 (Miss. 1964).

This provision makes the employer and his insurer proper but not necessary parties to an action against a negligent third person. Powe v. Jackson, 236 Miss. 11, 109 So. 2d 546, 1959 Miss. LEXIS 288 (Miss. 1959).

In an action against shipper by rail for personal injuries sustained because of alleged improper manner in loading a flatcar, by an employee of consignee, neither the consignee nor its insurance carrier, who were alleged to be paying the employee workmen's compensation benefits and who received notice of the action, were necessary parties to the action. American Creosote Works v. Harp, 215 Miss. 5, 60 So. 2d 514, 1952 Miss. LEXIS 531 (Miss. 1952).

4. Evidence of compensation.

There is no question for the jury to decide with reference to reimbursement of a compensation insurer who intervenes in a personal injury action brought by the compensation beneficiary of amounts paid the plaintiff beneficiary, for it is a matter of law and mandatory on the court alone to provide in its judgment for the distribution of any verdict rendered in strict accordance with this section [Code 1942, § 6998-36], and to grant an instruction which submitted the question of insurer's right to reimbursement constituted error. Merchants Co. v. Hutchinson, 199 So. 2d 813, 1967 Miss. LEXIS 1311 (Miss. 1967).

Where the compensation insurer intervened in a personal injury action brought by the plaintiff beneficiary, statements by its counsel in his argument to the jury of the amount of money the insurer had paid the plaintiff, and the insurer's desire to recover such sum out of any verdict awarded the plaintiff, constituted prejudicial error. Merchants Co. v. Hutchinson, 199 So. 2d 813, 1967 Miss. LEXIS 1311 (Miss. 1967).

In an action against a taxicab company filed by a bicyclist who threw his bicycle toward the curb to avoid a taxi which was speeding at an unlawful rate, evidence as to amount of money which the bicyclist received under workmen's compensation benefits was inadmissible. Coker v. Five-Two Taxi Service, Inc., 211 Miss. 820, 52 So. 2d 835, 1951 Miss. LEXIS 413 (Miss. 1951).

5. Settlement.

A workers' compensation trust was entitled to recover an amount paid for the funeral and medical expenses arising from the work-related death of an employee from a settlement between the adult daughter of the employee, acting as sole wrongful death beneficiary of her father, and several third parties whose negligence was alleged to have been a proximate contributing cause of the employee's death; the daughter could have pursued recovery for funeral and medical expenses as a part of her cause of action and, therefore, although she did not directly receive any compensation benefits because of her father's death, she did receive a real benefit based on the amount the trust paid in satisfaction of his medical bills and funeral expenses, since these obligations otherwise would have been a charge against her wrongful death recovery. Mississippi Food & Fuel Workers' Compensation Trust v. Tackett, 778 So. 2d 136, 2000 Miss. App. LEXIS 134 (Miss. Ct. App. 2000).

Approval by the commission of a settlement of a claim for compensation does not abdicate its jurisdiction over a settlement of the injured employee's negligence claim against a third person which the statute requires the commission to approve. Smith v. Bush, 312 F.2d 131, 1963 U.S. App. LEXIS 6497 (5th Cir. Miss. 1963).

The legislative purpose in requiring approval by the commission of settlements of employee's claims against third party tort feasors was to insure the protection of employees in their compensation rights, to prevent improvident releases, and to preserve the subrogation and indemnity rights of the employer or insurer against such third parties. Powe v. Jackson, 236 Miss. 11, 109 So. 2d 546, 1959 Miss. LEXIS 288 (Miss. 1959).

A settlement of an injured employee's claim against a third person before any action is brought, made without the commission's approval, is not binding on the employer or his insurer, although made upon notice to them. Powe v. Jackson, 236 Miss. 11, 109 So. 2d 546, 1959 Miss. LEXIS 288 (Miss. 1959).

An employer or insurer paying workmen's compensation for the death of an employee is entitled to share in the proceeds of a settlement of a claim against a third party tort feasor for causing the employee's death only where the beneficiary of the death action is also a workmen's compensation beneficiary. United States Fidelity & Guaranty Co. v. Higdon, 235 Miss. 385, 109 So. 2d 329, 1959 Miss. LEXIS 440 (Miss. 1959).

6. Disbursement of money recovered.

There should have been no distribution of funds from the settlement funds in a negligence action to appellees, an employee and his wife, because (1) a workers' compensation insurer paid the employee $ 27,729.21 in workers' compensation benefits for injuries that arose out of an automobile accident; (2) appellees brought the negligence action against the drivers of the vehicles that were involved in the accident; (3) the $ 25,000 settlement award from appellees' negligence suit should have been divided according to Miss. Code Ann. § 71-3-71, which required that a reasonable amount for the cost of collection should have been deducted, then the insurer should have been reimbursed up to the amount of its subrogation lien totaling $ 27,729.21; and (4) the amount of the lien was greater than the $ 25,000 settlement award. St. Paul Travelers Ins. Co. v. Burt, 982 So. 2d 992, 2008 Miss. App. LEXIS 289 (Miss. Ct. App. 2008).

Appellate court reversed a decision that denied an insurer's claim for reimbursement after an employee had settled with a third-party following its claim for workers' compensation benefits; under Miss. Code Ann. § 71-3-71, the insurer was entitled to reimbursement after deducting the costs of collection and attorneys fees. Federated Mut. Ins. Co. v. McNeal, 2006 Miss. LEXIS 123 (Miss. Mar. 30, 2006).

It was error for the trial court to bar the workers' compensation insurance carrier from receiving reimbursement of a settlement that the injured employee made with third-party tortfeasors, to recover the amounts that the carrier had paid to the employee in workers' compensation benefits, because Miss. Code Ann. § 71-3-71 clearly and unambiguously provided for recovery in such situations; the trial court should not have applied the "made whole" doctrine to negate the clear statutory requirements of § 71-3-71. Federated Mut. Ins. Co. v. McNeal, 943 So. 2d 658, 2006 Miss. LEXIS 678 (Miss. 2006).

A workers' compensation carrier, which was also the uninsured motorist carrier, was not entitled to a credit on behalf of a deceased employee, where the employee's beneficiary had failed to recover anything from the party responsible for the employee's death. Harris v. Magee, 573 So. 2d 646, 1990 Miss. LEXIS 900 (Miss. 1990), overruled in part, Meyers v. Am. States Ins. Co., 914 So. 2d 669, 2005 Miss. LEXIS 322 (Miss. 2005).

A workmen's compensation carrier was entitled to repayment of compensation benefits paid by it to an injured employee from punitive damages awarded the employee in a third party action, notwithstanding the contention that punitive damages were not awarded as compensation for the injury, since the insurer was statutorily entitled to repayment from the "net proceeds" of any action; the term "net proceeds" was broad enough to include any punitive damages that might be awarded. Mississippi Power Co. v. Jones, 369 So. 2d 1381, 1979 Miss. LEXIS 2250 (Miss. 1979).

The trial court was in error in not allowing an employer to intervene in the third party action brought by the heirs at law of the deceased employee against the third party tortfeasor, in order to recover the benefits actually paid by the employer under the requirements of the workmen's compensation law. Litton Systems, Inc. v. Murphree, 301 So. 2d 850, 1974 Miss. LEXIS 1667 (Miss. 1974).

When a recovery is made by a compensation beneficiary from a third-party wrongdoer whose liability carrier is also the compensation carrier of the beneficiary's employer, under the provisions of this section [Code 1942, § 6998-36] the balance of the proceeds remaining after payment of the costs of recovery shall be paid first to the compensation carrier to reimburse it in full for all benefits previously paid to the employee, with the remaining balance, if any, going to the employee. Tadlock v. United States Fidelity & Guaranty Co., 219 So. 2d 143, 1969 Miss. LEXIS 1414 (Miss. 1969).

Money paid by the third party for an invalid release is to be credited against so much of the judgment recovered against such third party as may be payable to the injured employee after reimbursing the employer's insurer for workmen's compensation paid. Powe v. Jackson, 236 Miss. 11, 109 So. 2d 546, 1959 Miss. LEXIS 288 (Miss. 1959).

The insurer has the right to receive, out of the proceeds of any judgment recovered from the third person, both compensation payments made to date and exoneration from future liability to the injured employee. Powe v. Jackson, 236 Miss. 11, 109 So. 2d 546, 1959 Miss. LEXIS 288 (Miss. 1959).

An employer and his insurer are entitled to a pro tanto discharge of any future liability to the extent of payments to the employee under a judgment recovered against a third party tort feasor. Powe v. Jackson, 236 Miss. 11, 109 So. 2d 546, 1959 Miss. LEXIS 288 (Miss. 1959).

When recovery is had by a compensation beneficiary from a third-party wrongdoer, the balance of the proceeds remaining after the payment of collection costs shall be used to discharge all the liability of the employer or insurer including that to accrue in the future as well as that already paid or accrued, and where the liability of the employer or insurer is not ascertainable at the time of recovery, the net proceeds of such recovery remaining after payment of collection costs and the reimbursement of the employer or insurer to that date, shall be paid over to the compensation beneficiary, whereupon the employer and insurer are authorized to suspend payment of such compensation benefits as they may be liable for under any provision of the Workmen's Compensation Law until such suspended benefits equal the amount of a third-party recovery. The employer or insurer's subrogation rights also extend to any possible death benefits arising in the case. Richardson v. United States Fidelity & Guaranty Co., 233 Miss. 375, 102 So. 2d 368, 1958 Miss. LEXIS 394 (Miss. 1958).

7. —Legal services.

Since § 71-3-71 requires that the court in which the third party action is pending shall be the forum for determining questions or issues concerning the distribution of settlement proceeds, chancery court was without jurisdiction over law firm's actions seeking, on equitable theories, apportionment of costs and fees, and recovery for legal services rendered by the law firm on behalf of Worker's Compensation insurer in third party action brought in Federal District Court by a covered employee for injuries sustained in the course of the employee's employment. Owen & Galloway v. Travelers Ins. Co., 499 So. 2d 776, 1986 Miss. LEXIS 2810 (Miss. 1986).

Since under § 71-3-71 the Worker's Compensation insurance carrier cannot be charged with a portion of the employee's cost of recovery in a third party action, a law firms complaint seeking, on equitable theories, apportionment of costs and fees, and recovery for legal services rendered by the firm on behalf of a worker's compensation carrier in a third party action brought by a covered employee for injuries sustained in the course of the employee's employment, failed to state a claim on which relief could be granted. Owen & Galloway v. Travelers Ins. Co., 499 So. 2d 776, 1986 Miss. LEXIS 2810 (Miss. 1986).

In a third-party action brought by an injured employee, it was wrong and an abuse of discretion on the part of the trial judge to allow an attorney's fee of one third of a manifestly worthless judgment and to provide for the full payment of the fee before the insurance carrier or the injured employee received anything. U. S. Fire Ins. Co. v. Hill, 209 So. 2d 440, 1968 Miss. LEXIS 1449 (Miss. 1968).

The words "amount recovered" as used in this section [Code 1942, § 6998-36] were intended by the legislature to mean any amount collected, and it was not the legislature's intention that the attorney representing the injured employee in a third-party action should under any circumstances have the entire amount recovered and that neither the insurance carrier nor the employee should receive anything; and a judgment of the lower court which provided that the employee's attorneys were entitled to reasonable fees in an amount stated, which sum was to be payable from the first proceeds collected on the judgment, that after payment of the attorney's fees any further "recovery under said judgment" should be used to discharge the legal liability of the insurance carrier under the Workmen's Compensation Law, and that if there were "any excess recovered under said judgment" the same should be paid to the injured employee was amended on appeal to allow the attorneys only one-third of any partial payment made on the judgment with the remainder first to be paid to the insurance carrier in reimbursement and the balance thereafter to be paid to the employee. U. S. Fire Ins. Co. v. Hill, 209 So. 2d 440, 1968 Miss. LEXIS 1449 (Miss. 1968).

It was error to allow an intervening workmen's compensation carrier what it paid for legal services performed when the insurer intervened in a wrongful death action. Kidwell v. Gulf, M. & O. R. Co., 251 Miss. 152, 168 So. 2d 735, 1964 Miss. LEXIS 335 (Miss. 1964).

RESEARCH REFERENCES

ALR.

Right to maintain malpractice suit against injured employee's attending physician notwithstanding receipt of workmen's compensation award. 28 A.L.R.3d 1066.

Workmen's compensation: attorney's fee or other expenses of litigation incurred by employee in action against third party tortfeasor as charge against employer's distributive share. 74 A.L.R.3d 854.

Modern status of effect of state workmen's compensation act on right of third-person tortfeasor to contribution or indemnity from employer of injured or killed workman. 100 A.L.R.3d 350.

Liability of employer with regard to inherently dangerous work for injuries to employees of independent contractor. 34 A.L.R.4th 914.

Right of health or accident insurer to intervene in workers' compensation proceeding to recover benefits previously paid to claimant or beneficiary. 38 A.L.R.4th 355.

Third-party tortfeasor's right to have

damages recovered by employee reduced by amount of employee's workers' compensation benefits. 43 A.L.R.4th 849.

Workers' compensation law as precluding employee's suit against employer for third person's criminal attack. 49 A.L.R.4th 926.

Wilful, wanton, or reckless conduct of employee as ground of liability despite bar of workers' compensation law. 57 A.L.R.4th 888.

"Dual Capacity Doctrine" as basis for employee's recovery for medical malpractice from company medical personnel. 73 A.L.R.4th 115.

Workers' compensation: third-party tort liability of corporate officer to injured workers. 76 A.L.R.4th 365.

Right of employer or workers' compensation carrier to lien against, or reimbursement out of, uninsured or underinsured motorist proceeds payable to employee injured by third party. 33 A.L.R.5th 587.

Exclusive remedy provision of Federal Employees' Compensation Act (5 USCS sec. 8116(c)) as precluding recovery of contribution or indemnity from the United States by third-party tortfeasors for sum expended in satisfying or settling suit by injured government employee. 12 A.L.R. Fed. 616.

Am. Jur.

82 Am. Jur. 2d, Workers' Compensation §§ 53 et seq.

82 Am. Jur. 2d, Workers' Compensation §§ 296, 434 et seq.

25 Am. Jur. Pl and Pr Forms (Rev), Workmen's Compensation, Forms 1 et seq.

CJS.

101 C.J.S., Workmen's Compensation §§ 1666 et seq.

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§ 71-3-73. Second Injury Trust Fund.

(1) If an employee who has previously lost, or lost the use of, one (1) hand, one (1) arm, one (1) foot, one (1) leg, or one (1) eye, becomes permanently and totally incapacitated through the loss, or loss of use, of another member or organ, the employer shall be liable only for the compensation payable for such second injury. In addition to such compensation and after the completion of the payment therefor, the employee shall be paid the remainder of the compensation that would be due for permanent total incapacity, out of a special fund known as the "Second Injury Trust Fund," and created for such purpose in the following manner:

In every case of compensable death of an employee under this chapter, the employer or, if insured, his insurance carrier shall pay to the commission the sum of Three Hundred Dollars ($300.00) except in cases where there is no dependency, then there shall be paid to the commission the sum of Five Hundred Dollars ($500.00) to be deposited with the State Treasurer for the benefit of said fund. A suspension of said payments of Three Hundred Dollars ($300.00) per death shall be made when the total amount of all such payments, together with the accumulated interest thereon, equals or exceeds Three Hundred Fifty Thousand Dollars ($350,000.00), and no further contributions to said fund shall be made except in cases where there is no dependency. Whenever, thereafter, the amount of such sum shall be reduced below One Hundred Fifty Thousand Dollars ($150,000.00) by reason of payments made pursuant to this section, then such contributions of Three Hundred Dollars ($300.00) per death shall be resumed forthwith and shall continue until such sum, together with accumulated interest thereon, shall again amount to Three Hundred Fifty Thousand Dollars ($350,000.00); and the commission shall direct the distribution thereof.

(2) During fiscal year 2017 and thereafter, the Workers' Compensation Commission shall have full authority to assess employers or insurers the amounts provided in this section for deposit into the Second Injury Trust Fund, however, such funds shall not be used for the support of the agency.

HISTORY: Codes, 1942, § 6998-37; Laws, 1948, ch. 354, § 31; Laws, 1956, ch. 345, § 1; Laws, 1960, ch. 278; reenacted without change, Laws, 1982, ch. 473, § 37; Laws, 1983, ch. 497, § 1; Laws, 1987, ch. 361, § 6; reenacted without change, Laws, 1990, ch. 405, § 39; Laws 2017, 1st Ex Sess, ch. 7, § 27, eff from and after passage (approved June 23, 2017).

JUDICIAL DECISIONS

1. In general.

Where minor brothers were partially dependent for their support upon a deceased workman killed in the course of his employment, and were entitled to compensation benefits, the employer's insurer was required to pay only $150 to the commission for the second injury fund, and the supreme court would pretermit consideration of the question of the insurer's right to a refund without prejudice to the insurer to make appropriate requests therefor to the commission. United States Fidelity & Guaranty Co. v. Fortner, 234 So. 2d 636, 1970 Miss. LEXIS 1419 (Miss. 1970).

RESEARCH REFERENCES

Am. Jur.

82 Am. Jur. 2d, Workers' Compensation §§ 332, 333 et seq., 615.

CJS.

99 C.J.S., Workmen's Compensation §§ 179, 180.

101 C.J.S., Workmen's Compensation §§ 1465, 1466, 1469-1473.

§ 71-3-75. Security for payment of compensation.

(1) **Insurance of liability:** An employer liable under this chapter to pay compensation shall insure payment of such compensation by a carrier authorized to insure such liability in this state unless such employer shall be exempted from doing so by the commission.

(2) **Exemption from insuring:** An employer desiring to be exempt from

insuring its liability for compensation shall make application to the commission, showing its financial ability to pay such compensation and agreeing as a condition for the granting of the exemption to faithfully report all injuries under compensation according to law and the requirement of the commission, and to comply with the provisions of this chapter and the rules of the commission pertaining to the administration thereof; whereupon the commission by written order may make such exemption. The commission may from time to time require further statement of financial ability of such employer to pay compensation and may, upon ten (10) days' notice in writing, for financial reasons or for failure of the employer to faithfully discharge its obligations according to the agreements contained in its application for exemption, revoke the order granting such exemption, in which case such employer shall immediately insure its liability as otherwise required under this chapter. As a condition for the granting of an exemption, the commission shall have authority to require the employer to furnish such security as the commission may consider sufficient to insure payment of all claims of such employer under compensation. State agencies qualified as self-insured status shall not be required to furnish any security to insure or guarantee payment of claims or expenses and shall not be required to establish and maintain reserves for claims incurred but not reported and expenses associated therewith, as a condition for the granting or continuation of an exemption as herein provided. Where the security is in the form of a bond or other personal guaranty, the commission may, at any time either before or after the entry of an award upon at least ten (10) days' notice and opportunity to be heard, require the sureties to pay the amount of the award, the same to be enforced in like manner as the award itself may be enforced. Where an employer procures an exemption as herein provided and thereafter enters into any form of agreement for insurance coverage with an insurance company or interinsurer not licensed to operate in this state, its conduct shall automatically operate as a revocation of such exemption. An order exempting an employer from insuring its liability for compensation shall be null and void if the application contains a financial statement which is false in any material respect. The commission shall revoke the self-insurance permit if the employer is found to have directly or indirectly induced an employee to forego his right to workers' compensation benefits.

(3) **Pooling of liabilities:** The commission may, under such rules and regulations as it prescribes, permit two (2) or more employers engaged in a common type of business activity or pursuit, or having other reasons to associate, to enter into agreements to pool their liabilities under this section for the purpose of qualifying as group self-insurers, and, in conjunction therewith, to enter into agreements to pool any other liabilities to their employees, and each employer member of such approved group shall be classified as a self-insurer. A self-insured group under this section shall be comprised of employer members of the same bona fide trade association or trade group. Such trade association or trade group shall be domiciled in the State of Mississippi, shall have been in existence for five (5) or more consecutive years as of the date of application for an approved group and shall

not be comprised solely of employer members who are affiliates of a person possessing controlling interest in such affiliates.

HISTORY: Codes, 1942, § 6998-38; Laws, 1948, ch. 354, § 32; reenacted without change, Laws, 1982, ch. 473, § 38; Laws, 1988, ch. 560; reenacted without change, Laws, 1990, ch. 405, § 40; Laws, 2004, ch. 347, § 1; Laws, 2006, ch. 526, § 1, eff from and after passage (approved Apr. 3, 2006).

Cross References — Application of the workers' compensation self-insurer guaranty association law to employers who are self-insurers under the provisions of this section, see § 71-3-153.

Application of this section to the definition of "self-insurer," see § 71-3-157.

Requirement that all self-insurers be and remain members of the workers' compensation self-insurer guaranty association as a condition of their authority under this section, see § 71-3-159.

Power of Mississippi Workers' Compensation Self-insurer Guaranty Association to assess member self-insurers amounts necessary to pay obligations of Association, see § 71-3-163.

Power of the workers' compensation commission to suspend or revoke the authority to self-insure granted under this section, see § 71-3-167.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Insurance by carrier.
3. Self-insurer.
4. Failure to insure.

1. In general.

The requirement that an employer must secure payment of compensation means that he must have in effect an insurance policy complying with the Workmen's Compensation Law, or that he must qualify as a self-insurer. Taylor v. Crosby Forest Products Co., 198 So. 2d 809, 1967 Miss. LEXIS 1271 (Miss. 1967).

2. Insurance by carrier.

Where the employer and his insurance carrier have paid all the costs and statutory damages which were assessed against them upon their failure to successfully prosecute their appeal, and it was agreed that they would pay installments of the award of compensation as and when the same payments became due and payable, and the employee stipulated in writing that concurrence in the motion to cancel the supersedeas appeal bond insofar as surety thereon was concerned, the supreme court would sustain the motion to cancel the supersedeas bond. Watkins v. Taylor, 219 Miss. 637, 69 So. 2d 406, 1954 Miss. LEXIS 372 (Miss. 1954).

The applicable provisions of the Workmen's Compensation Law are automatically written into insurance policy by operation of the law. National Surety Corp. v. Kemp, 217 Miss. 537, 65 So. 2d 840, 1953 Miss. LEXIS 463 (Miss. 1953).

Where claimant was employed by partnership on a yearly basis under a contract requiring him to take full charge of gin during ginning season, and where it appeared that injuries arose when one of the partners directed the claimant to erect banners for such partner who was a candidate for sheriff, statement signed by such partner and prepared by one of the attorneys for insurance carrier was admissible as evidence before attorney referee. National Surety Corp. v. Kemp, 217 Miss. 537, 65 So. 2d 840, 1953 Miss. LEXIS 463 (Miss. 1953).

3. Self-insurer.

Workers' Compensation Group Self-Insurer Guaranty Association (GGA) had the authority to assess the Mississippi Manufacturers Association Workers' Compensation Group because the assessment was levied within three years of its withdrawal from the GGA; therefore, the assessment was consistent with the GGA's plan of operation and was a valid exercise of the Workers' Compensation Commission's regulatory authority under the Workers' Compensation Self-insurer Guaranty Association Law. Miss. Mfrs. Ass'n Workers' Comp. Grp. v. Miss. Workers' Comp. Group Self-Insurer Guar. Ass'n, 281 So. 3d 108, 2019 Miss. App. LEXIS 45 (Miss. Ct. App. 2019).

Where the employer secured the payment of compensation to his employees by qualifying as a self-insurer, the remedy of an employee arises only under the Workmen's Compensation Law, and that statutory remedy being exclusive, no action at law is available to the employee. Taylor v. Crosby Forest Products Co., 198 So. 2d 809, 1967 Miss. LEXIS 1271 (Miss. 1967).

The workmen's compensation commission alone is vested with authority to revoke or nullify an employer's status as a self-insurer, and trial courts have no such authority. Taylor v. Crosby Forest Products Co., 198 So. 2d 809, 1967 Miss. LEXIS 1271 (Miss. 1967).

4. Failure to insure.

Decedent's employer was not entitled to immunity from suit under Miss. Code Ann. § 71-3-7 because it did not indirectly secure workers compensation coverage for its employees by reimbursing a timber company, for whom the employer was a subcontractor, for the workers compensation coverage it obtained for the employer's employees. The court rejected the employer's argument that it was entitled to "down-the-line" immunity because it assumed that it was the legislative intent not to create this immunity. Lamar v. Thomas Fowler Trucking, Inc., 956 So. 2d 911, 2006 Miss. App. LEXIS 249 (Miss. Ct. App. 2006), aff'd, 956 So. 2d 878, 2007 Miss. LEXIS 279 (Miss. 2007).

When accident happened to an employee, the employer had no compensation insurance and did not apply to the commission for a policy under the assigned risk plan, the employee had a right to bring a common-law action for damages in view of the fact that the employer failed to comply with the Workmen's Compensation Law. McCoy v. Cornish, 220 Miss. 577, 71 So. 2d 304, 1954 Miss. LEXIS 474 (Miss. 1954).

OPINIONS OF THE ATTORNEY GENERAL

The Workers' Compensation Commission may accept certificates of deposit in lieu of surety bonds for companies that are self-insured; in such case, the Office of State Treasurer is the proper place for safekeeping of the security. Clark, June 14, 2002, A.G. Op. #02-0227.

RESEARCH REFERENCES

Am. Jur.

82 Am. Jur. 2d, Workers' Compensation § 608.

CJS.

100 C.J.S., Workers' Compensation §§ 639-642, 668, 692-697 et seq.

§ 71-3-77. Insurance policy regulations.

(1) Every contract for the insurance of the compensation herein provided, or against liability therefor, shall be deemed to be made subject to the provisions of this chapter, and provisions thereof inconsistent with this chapter shall be void. Such contract shall be allowed to offer deductibles on all liability of the assured under and according to the provisions of this chapter, notwithstanding any agreement of the parties to the contrary. However, the payments of the claims, including the deductible amounts, shall be made directly from the insurance company to the employee, except for medical benefits which shall be paid to the medical provider. A copy of such payments shall be

forwarded to the employer. The insurance company shall collect the deductible from the employer as shall be provided in the contract between the employer and the insurer. No such policy shall be subject to nonrenewal, or cancelled by the insurer within the policy period, until a notice in writing shall be given to the commission and to the insured, fixing the date on which it is proposed to cancel it or declaring that the company does not intend to renew the policy upon expiration date. Notice to the insured shall be served personally or by registered or certified mail. Notice to the commission shall be provided in such manner and on such form as the commission may prescribe or direct. No such cancellation or nonrenewal shall be effective until thirty (30) days after the service of such notice on the insured and the provision of notice to the commission, unless the employer has obtained other insurance coverage, in which case such policy shall be deemed cancelled as of the effective date of such other insurance, whether or not such notice has been given. The notice requirements of this section shall not apply when a replacement policy form providing the same or substantially similar coverage is issued by the same insurer, or when transfer of an insured to a licensed affiliate providing the same or substantially similar coverage occurs. Whenever a replacement policy form providing the same or substantially similar coverage is issued by the same insurer, or when a transfer of an insured to a licensed affiliate of the insurer providing the same or substantially similar coverage occurs, documents signed by the insured are applicable to the replacement policy and to coverage being transferred, and remain valid and enforceable.

The insured may also cancel such a policy on the day that the insured either (a) returns the policy to the agent, or (b) signs and delivers to the agent a "lost policy release." If the insured desires to cancel a policy before the policy has become effective, he may cancel the policy by written notice of cancellation to the agent or company without return of the policy or a release.

Whenever a replacement policy form providing the same or substantially similar coverage is issued by the same insurer, or by a licensed affiliate insurer, such insurer shall mail or deliver to the policyholder, at least thirty (30) days in advance of the effective date of renewal, written notice of any terms or conditions that are less favorable to the policyholder.

A transferring insurer shall notify the Mississippi Insurance Department and the Mississippi Workers' Compensation Commission at least forty-five (45) days in advance of notifying a policyholder that its personal or commercial lines insurance policies will be transferred to another licensed insurer within the same insurance group or same holding company. The notice shall include the name of insurer transferring the personal or commercial lines policies and the name and financial rating of the insurer receiving the transferred personal or commercial lines policies.

A transferring insurer shall provide the policyholder written notice of the policy transfer at least thirty (30) days prior to expiration of the policy term and shall include the financial rating of the insurer receiving the transferred policy. Such notice must be provided to the policyholder with the notice of renewal premium at least thirty (30) days before the effective date of the transfer.

(2) In any case where the employer is not a self-insurer, in order that the liability for compensation imposed by this chapter may be most effectively discharged by the employer and in order that the administration of this chapter in respect of such liability may be facilitated, the commission shall by regulation provide for the discharge, by the carrier or carriers for such employer, of such obligations and duties of the employer in respect of such liability imposed by this chapter upon the employer as it considers proper in order to effectuate the provisions of this chapter. For such purpose (a) notice to or knowledge of an employer of the occurrence of the injury shall be notice to or knowledge of the carrier or carriers; (b) jurisdiction of the employer by the commission or any court under this chapter shall be jurisdiction of the carrier or carriers; and (c) any requirement by the commission or any court under any compensation order, finding, or decision shall be binding upon the carrier or carriers in the same manner and to the same extent as upon the employer.

(3) As used in this section:

(a) "Affiliate transfer" is when an insurer transfers, at renewal or policy expiration, its personal or commercial lines insurance policies to an affiliated licensed insurer that is a member of the same insurance group or same holding company as the transferring insurer. The issuance of a replacement policy form providing the same or substantially similar coverage issued by the same insurer, or the transfer of personal or commercial insurance policies to a licensed affiliate insurer that will issue the same or substantially similar policy, are considered a renewal and will not be treated as a cancellation or nonrenewal. The affiliate transfer must be to a licensed affiliate insurer that has been determined by the commissioner to have the same or better financial strength as the transferring insurer. The policy transfer must be selected on a nondiscriminatory basis.

(b) "Substantially similar" means a policy that provides the same basic coverages but may add, alter or eliminate incidental coverages and may provide coverages using different textual language.

HISTORY: Codes, 1942, § 6998-39; Laws, 1948, ch. 354, § 33; Laws, 1972, ch. 396, § 1; reenacted, Laws, 1982, ch. 473, § 39; reenacted without change, Laws, 1990, ch. 405, § 41; Laws, 1992, ch. 577, § 5; Laws, 2007, ch. 366, § 1, eff from and after July 1, 2007; Laws, 2018, ch. 312, § 4, eff from and after July 1, 2018.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the first and second sentences of (1). The word "this" was substituted for "the" so that "inconsisent with the chapter" now reads "inconsistent with this chapter" and "the provisions of the chapter" now reads "the provisions of this chapter." The Joint Committee ratified the correction at its August 5, 2008, meeting.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Construction of coverage.
3. Notice of cancellation.

1. In general.

Statute does not apply to situations in

which a policy expires for failure to pay a premium in a timely manner. Amfed Nat'l Ins. Co. v. NTC Transp., Inc., 196 So. 3d 947, 2016 Miss. LEXIS 318 (Miss. 2016).

It was error to affirm an order granting an employer summary judgment because the employer failed to establish that it had coverage in effect at the time of an employee's injury; the statute was inapplicable because the insurer did not cancel the employer's policy or intend to renew the policy. Amfed Nat'l Ins. Co. v. NTC Transp., Inc., 196 So. 3d 947, 2016 Miss. LEXIS 318 (Miss. 2016).

There is no support in the Mississippi Workers' Compensation Act, or in the case law, for the proposition that an employer which itself is free of any wrongdoing can be held liable on an alter-ego theory for its workers' compensation carrier's bad faith failure to pay benefits; the law, in fact, is to the contrary. Toney v. Lowery Woodyards, 278 F. Supp. 2d 786, 2003 U.S. Dist. LEXIS 14180 (S.D. Miss. 2003).

Under Mississippi law, carrier which provided workers' compensation insurance both to claimant's employer and claimant's alleged borrowing employer had no legitimate or arguable reason to initially deny benefits, and thus was liable for bad faith denial, notwithstanding its arguments that it had independent legitimate reasons, including dispute over whether each insured was claimant's employer, not to pay under either policy; such reasons were irrelevant given that statutory requirements were met such that carrier had obligation to promptly pay benefits regardless of which of its insureds was claimant's employer. Rogers v. Hartford Accident & Indem. Co., 133 F.3d 309, 1998 U.S. App. LEXIS 442 (5th Cir. Miss. 1998).

Under Mississippi law, when employer has knowledge of workers' compensation claimant's injury, formal notice to employer of occurrence of injury is not needed to trigger carrier's obligation to provide benefits, and this knowledge is imputed to carrier without any formal notification to carrier. Rogers v. Hartford Accident & Indem. Co., 133 F.3d 309, 1998 U.S. App. LEXIS 442 (5th Cir. Miss. 1998).

The provisions of this section [Code 1942, § 6998-39] with reference to the force and effect of insurance provided for under the Workmen's Compensation Law has no application to a case where the supreme court had held that the employers, at the time of claimant's injury, were not under the Workmen's Compensation Law. Eaton v. Joe N. Miles & Sons, 238 Miss. 605, 119 So. 2d 359, 1960 Miss. LEXIS 444 (Miss. 1960).

The applicable provisions of the Workmen's Compensation Law are automatically written into insurance policy by operation of the law. National Surety Corp. v. Kemp, 217 Miss. 537, 65 So. 2d 840, 1953 Miss. LEXIS 463 (Miss. 1953).

2. Construction of coverage.

In view of the common-law rule, which was not changed by the Workmen's Compensation Law, that partners are jointly and severally liable for partnership obligations, and the provisions of this section [Code 1942, § 6998-39], a carrier which had written a compensation policy for one of the partners in the partnership was liable for compensation benefits to the partnership employee. United States Fidelity & Guaranty Co. v. Collins, 231 Miss. 319, 95 So. 2d 456, 1957 Miss. LEXIS 516, 1957 Miss. LEXIS 517 (Miss. 1957).

Since a compensation policy secured in his own behalf by one of the members of a partnership doing subcontracting work covered the compensation rights of injured partnership employee, the secondary liability of the prime contractor and its carrier did not take effect as a direct obligation, upon the ground that the partnership failed to secure coverage of its employees. United States Fidelity & Guaranty Co. v. Collins, 231 Miss. 319, 95 So. 2d 456, 1957 Miss. LEXIS 516, 1957 Miss. LEXIS 517 (Miss. 1957).

Where claimant was employed by partnership on a yearly basis under a contract requiring him to take full charge of gin during ginning season, and where it appeared that injuries arose when one of the partners directed the claimant to erect banners for such partner who was a candidate for sheriff, statement signed by such partner and prepared by one of the attorneys for insurance carrier was admissible as evidence before attorney-referee. National Surety Corp. v. Kemp, 217

Miss. 537, 65 So. 2d 840, 1953 Miss. LEXIS 463 (Miss. 1953).

3. Notice of cancellation.

By signing the lost policy release, the employer canceled coverage consistent with the provisions for immediate cancellation set out in Miss. Code Ann. § 71-3-77 (1)(b); under this section, a workers' compensation insurer must give the insured 30 days notice of intent to cancel a policy unless the insured signs and delivers a lost policy release. Stingley v. Redland Ins. Co., 943 So. 2d 86, 2006 Miss. App. LEXIS 681 (Miss. Ct. App. 2006).

An insurer achieved an effective policy cancellation, notwithstanding that the notice of cancellation was not sent by registered mail as required by the statute, where the employer obtained other insurance coverage with another insurance carrier through its alter ego. Liberty Mut. Ins. Co. v. Holliman, 765 So. 2d 564, 2000 Miss. App. LEXIS 81 (Miss. Ct. App. 2000).

The purpose of the provisions of this section [Code 1942, § 6998-39] that no workmen's compensation insurance policy shall be canceled within the period of coverage unless a notice is filed with the commission, and shall not be effective until 30 days after service of notice, is to give assurance to the commission that eligible employees are protected under the act. Arender v. National Sales, Inc., 193 So. 2d 579, 1966 Miss. LEXIS 1289, 1967 Miss. LEXIS 1552 (Miss. 1966).

Where the statute provides that every contract for insurance of compensation shall be deemed to be made subject to the provision of Workmen's Compensation Law, and that no such policy shall be cancelled until due notice in writing is given to the commission, and no such cancelation shall be effective until thirty days after service of such notice unless the employer obtained other insurance, the statute was applicable to binder issued by insurer. T. H. Mastin & Co. v. Russell, 214 Miss. 700, 59 So. 2d 321, 1952 Miss. LEXIS 509 (Miss. 1952).

RESEARCH REFERENCES

ALR.

Insurance carrier's liability for part of employer's liability attributable to violation of law or other misconduct on his part. 1 A.L.R.2d 407.

Validity and construction of liability policy provision requiring insured to reimburse insurer for payments made under policy. 29 A.L.R.3d 291.

Modern status of rules requiring liability insurer to show prejudice to escape liability because of insured's failure or delay in giving notice of accident or claim or in forwarding suit papers. 32 A.L.R.4th 141.

CJS.

100 C.J.S., Workers' Compensation §§ 639-642, 668, 695 et seq.

§ 71-3-79. Acceptance of premium by carrier and estoppel.

Acceptance of a premium on a policy securing to an employee compensation, either alone or in connection with other insurance, shall estop the carrier so accepting from pleading that the employment of such employee is not covered under this chapter or that the employment is not carried on for pecuniary gain.

When any member of a partnership, firm, or association who does or does not perform manual labor, and where there is coverage of fellow employees, elects to take coverage under the provisions of this chapter, the intent of the insured as well as acceptance by the carrier shall be shown by endorsement to the policy. Any such affirmative action by the parties shall entitle said members or officers to the benefits enjoyed by an employee under this chapter.

Every executive officer elected or appointed and empowered in accordance with a charter and bylaws of a corporation, other than nonprofit charitable, fraternal, cultural, or religious corporations or associations, shall be an employee of such corporation under this chapter, provided that said executive officer may reject said coverage by giving notice in writing to the carrier of this election not to be covered as an employee.

Any such executive officer of a nonprofit charitable, fraternal, cultural, or religious corporation or association may, notwithstanding any other provision of this chapter, be brought within the coverage of its insurance contract by any such corporation or association by specifically including such executive officer in such contract of insurance. The election to bring such executive officer within the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus brought within the coverage of the insurance contract shall be employees of such corporation or association under this chapter.

HISTORY: Codes, 1942, § 6998-40; Laws, 1948, ch. 354, § 34; Laws, 1950, ch. 412, § 14; Laws, 1964, ch. 444; reenacted without change, Laws, 1982, ch. 473, § 40; reenacted without change, Laws, 1990, ch. 405, § 42, eff from and after July 1, 1990.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Personnel covered.
3. Necessity of endorsement.
4. Estoppel.

1. In general.

Workers' Compensation Act applied to an employer because it had at least five employees at the time of a workers' injury; there was no evidence that any of the employer's officers had elected to opt out of coverage in writing, and thus, they acted as employees and counted as employees for coverage purposes. Southeastern Auto Brokers v. Graves, 210 So. 3d 1012, 2015 Miss. App. LEXIS 205 (Miss. Ct. App. 2015).

This statute applies where the relation of employment exists. Dependents of Dawson v. Delta Western Exploration Co., 245 Miss. 335, 147 So. 2d 485, 1962 Miss. LEXIS 556 (Miss. 1962).

2. Personnel covered.

A claimant was not exempted from coverage under the statute, notwithstanding that she was elected as assistant executive secretary of the employer, thereby making her an officer, and that she signed a certificate of exemption of coverage under the workers' compensation law, where she was elected as an officer of the company simply to subject her to such exemption, thereby saving the company money on workers' compensation premiums, and she was threatened with losing her job if she did not comply by signing the waiver. Financial Inst. Ins. Serv. v. Hoy, 770 So. 2d 994, 2000 Miss. App. LEXIS 424 (Miss. Ct. App. 2000).

That a workmen's compensation insurance policy extends to executives does not render the insurer liable for compensation awarded to officers serving without pecuniary remuneration affording a basis for paying premiums. Le-Co Gin Co. v. Stratton, 241 Miss. 623, 131 So. 2d 450, 1961 Miss. LEXIS 381 (Miss. 1961).

The second paragraph of this section [Code 1942, § 6998-40] clearly manifests a legislative intent to make possible the coverage of officers of a corporation who exercised executive functions only, and who performed no duties as an ordinary employee. M. E. Badon Refrigeration Co. v. Badon, 231 Miss. 113, 95 So. 2d 114, 1957 Miss. LEXIS 495 (Miss. 1957).

Where a lumber company was making deductions for workmen's compensation from purchase price paid the owner of sawmill for lumber, and the company's insurance carrier's premium was not based on the payroll of the sawmill, this section [Code 1942, § 6998-40] did not render the carrier liable for death of the sawmill's employee. Durham v. Deemer Lumber Co., 227 Miss. 461, 86 So. 2d 343, 1956 Miss. LEXIS 712 (Miss. 1956).

Where the claimant was a working partner of a firm which had not obtained compensation coverage by compliance with the provisions of the Workmen's Compensation Law, his injury was not compensable. American Surety Co. v. Cooper, 222 Miss. 429, 76 So. 2d 254, 1954 Miss. LEXIS 662 (Miss. 1954).

3. Necessity of endorsement.

The intent of an employer to take coverage under the provisions of the Workmen's Compensation Law as an employee, as well as the acceptance of coverage by the insurer, must be shown by indorsement to the policy, and in the absence of such an indorsement the insurer is not liable to the heirs of the deceased employer. Sullivan v. Heirs of Sullivan, 192 So. 2d 277, 1966 Miss. LEXIS 1244 (Miss. 1966).

An insurer who has knowingly received the proper premium cannot claim noncoverage of an employee admitted to partnership in the insured firm because the policy was not endorsed to that effect. Phyfer Furniture Co. v. Phyfer, 242 Miss. 767, 137 So. 2d 186, 1962 Miss. LEXIS 592 (Miss. 1962).

4. Estoppel.

Cable lineman supervisor was entitled to worker's compensation benefits, although he was subcontractor and not employee, where owner of company for which subcontractor was performing job knew subcontract was being performed by 6 workmen and had agreed to provide workers' compensation coverage for them, even though owner did not know that subcontractor himself was one of crew members. Champion Cable Constr. Co. v. Monts, 511 So. 2d 924, 1987 Miss. LEXIS 2682 (Miss. 1987).

Where an insured had formed a partnership upon the advice of the insurer's agent in order to obtain assigned risk workmen's compensation insurance, and he had informed the agent of a prior heart attack as his reason for requiring risk insurance, and the policy issued named the insured as an active partner and imposed an 8 percent surcharge on account of the risk, the failure of the insurer through its agent, to notify the insured that it would not write the assigned risk policy, instead issuing a policy purporting to comply with the explicit requirements of the application, changing the position of the insured to his detriment, and where the insurer continued to accept premiums and surcharges, the insurer was estopped from pleading that the insured was ineligible to recover benefits when he suffered a heart attack 5 years after the policy was issued, notwithstanding the absence of a partnership indorsement on the policy. Carter v. Carter, 246 So. 2d 520, 1971 Miss. LEXIS 1403 (Miss. 1971).

In the absence of proof of the existence of the relationship of insurer and insured, the insurer's acceptance of the premium does not operate as an estoppel. Sullivan v. Heirs of Sullivan, 192 So. 2d 277, 1966 Miss. LEXIS 1244 (Miss. 1966).

Where an advance premium deposit is made by an employer covering a list of employees and this advance premium deposit is accepted by the insurance carrier and a workmen's compensation policy is issued, the insurance carrier is estopped under the provisions of this section [Code 1942, § 6998-40] to plead that the person or persons on which the policy was issued were ineligible to receive benefits, after liability has attached by reason of the accident to one of the listed employees. Tallco, Inc. v. Queenan, 253 Miss. 709, 178 So. 2d 665, 1965 Miss. LEXIS 1036 (Miss. 1965).

Where an employee sustaining fatal injuries while working in foreign country was an employee of Mississippi employer under contracts executed in Mississippi for temporary services outside of the state, and the insurance carrier had accepted the premium on a policy securing compensation to such employees of the employer, the insurance carrier was estopped from asserting that the injured employee's employment was not covered by the statute. Dependents of Dawson v. Delta Western Exploration Co., 245 Miss. 335, 147 So. 2d 485, 1962 Miss. LEXIS 556 (Miss. 1962).

The estoppel provided by this section [Code 1942, § 6998-40] does not extend to the contention that the employment is one to which the Workmen's Compensation Law does not apply. Valley Towing Co. v. Allen, 236 Miss. 51, 109 So. 2d 538, 1959 Miss. LEXIS 293 (Miss. 1959).

A compensation carrier which issued a policy to a corporation insuring, by virtue of a separate clause, salesmen at a time when the corporation had only two salesmen, both of whom were also stockholders and officers, and which had admittedly received premiums based upon the wages of the secretary-salesman, was estopped to deny that the secretary-salesman, whose death arose out of and in the course of his employment while doing nonsupervisory work, was not covered by the Workmen's Compensation Law. M. E. Badon Refrigeration Co. v. Badon, 231 Miss. 113, 95 So. 2d 114, 1957 Miss. LEXIS 495 (Miss. 1957).

RESEARCH REFERENCES

Am. Jur.
82 Am. Jur. 2d, Workers' Compensation § 627.

CJS.
100 C.J.S., Workers' Compensation § 746, 752-756, 758.

§ 71-3-81. Notice of coverage.

Every employer who has secured compensation under the provisions of this chapter shall keep notices posted in a conspicuous place or places in and about his place or places of business, in accordance with a form prescribed by the commission, stating that such employer has secured the payment of compensation in accordance with the provisions of this chapter. Such notices shall contain the name and address of the carrier, if any, with whom the employer has secured payment of the compensation and the date of the expiration of the policy.

HISTORY: Codes, 1942, § 6998-41; Laws, 1948, ch. 354, § 35; reenacted without change, Laws, 1982, ch. 473, § 41; reenacted without change, Laws, 1990, ch. 405, § 43, eff from and after July 1, 1990.

Editor's Notes — Laws of 2012, ch. 522, § 10, provides:

"SECTION 10. The Workers' Compensation Commission shall promulgate a written statement specifying the changes made to the Workers' Compensation Law by this act to every employer in this state subject to the Workers' Compensation Law. Within ten (10) days of receipt of this written statement from the Commission, every employer shall post the Commission's statement in a conspicuous place or places in and about his place or places of business and adjacent to the Notice of Coverage as required by Section 71-3-81."

RESEARCH REFERENCES

CJS.
99 C.J.S., Workers' Compensation §§ 237, 238.

§ 71-3-83. Civil and criminal penalties for failure to secure payment of compensation.

(1) Any employer required to secure the payment of compensation under this chapter who fails to secure such compensation is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment. If the employer is a corporation, the president, secretary and treasurer thereof shall be also severally liable to such fine or imprisonment as herein provided for the failure of such corporation to secure the payment of compensation; and such president, secretary and treasurer shall be severally personally liable, jointly with such corporation, for any compensation or other benefit which may accrue under this chapter in respect to any injury which may occur to any employee of such corporation while it shall so fail to secure the payment of compensation as required by this chapter.

(2) Any uninsured employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes or destroys any property belonging to such employer after one of his employees has been injured within the purview of this chapter, and with intent to avoid the payment of compensation under this chapter to such employee or his dependents, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment. If the employer is a corporation, the president, secretary and treasurer thereof shall be also severally liable to such penalty of imprisonment as well as jointly liable with such corporation for such fine.

(3) This section shall not affect any other liability of the employer under this chapter.

(4) In addition to the criminal penalties set forth above, and under the same circumstances, terms and conditions as set forth in subsections (1) and (2), the commission may assess a civil penalty in an amount to be determined by the commission on a case by case basis, but not to exceed Ten Thousand Dollars ($10,000.00). Any civil penalty levied and collected by the commission shall be deposited into the Administrative Expense Fund provided for in Section 71-3-97, and any penalty not voluntarily paid may be collected by civil suit brought by the commission.

HISTORY: Codes, 1942, § 6998-42; Laws, 1948, ch. 354, § 36; reenacted without change, Laws, 1982, ch. 473, § 42; reenacted without change, Laws, 1990, ch. 405, § 44; Laws, 1993, ch. 552, § 2, eff from and after passage (approved April 13, 1993).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. Standard of proof.
2. Res judicata.
3. Statute of limitations.

1. Standard of proof.

In a case where it was decided that two owners should have procured workers' compensation insurance for a logging business, the preponderance of the evidence standard was properly used in making this determination under Miss. Code Ann. § 71-3-5, rather than the clear and convincing proof standard in Miss. Code Ann. § 71-3-83. White v. Jordan, 11 So. 3d 755, 2008 Miss. App. LEXIS 679 (Miss. Ct. App. 2008), cert. denied, 2009 Miss. LEXIS 297 (Miss. June 25, 2009), cert. denied, 12 So. 3d 531, 2009 Miss. LEXIS 289 (Miss. 2009).

2. Res judicata.

Res judicata did not bar enforcing a workers' compensation judgment against a corporate employer's president, despite not being a named party in the suit awarding compensation, because (1) the president was statutorily liable for the employer's failure to secure compensation and compensate the employee, and (2) the judgment was tantamount to a judgment against the president as the president controlled the prior suit and was the employer's alter ego, nor did this violate due process, as the president's interests were aligned with the employer. Jarrett v. Dillard, 167 So. 3d 1147, 2015 Miss. LEXIS 348 (Miss. 2015).

After a worker got a workers' compensation award against an employer, res judicata barred the worker's estate's subsequent claim under Miss. Code Ann. § 71-3-83(1) to hold the employer's principal personally liable because, inter alia, the character of the person against whom the claim was made was the same, as the principal's personal liability was an issue in the first case. Jarrett v. Dillard, 167 So. 3d 1207, 2014 Miss. App. LEXIS 380 (Miss. Ct. App. 2014), rev'd, 167 So. 3d 1147, 2015 Miss. LEXIS 348 (Miss. 2015).

After a worker got a workers' compensation award against an employer, res judicata barred the worker's estate's subsequent claim under Miss. Code Ann. § 71-3-83(1) to hold the employer's principal personally liable because, inter alia, the parties were the same, as the principal was the employer's alter ego and the estate was the worker's successor. Jarrett v. Dillard, 167 So. 3d 1207, 2014 Miss. App. LEXIS 380 (Miss. Ct. App. 2014), rev'd, 167 So. 3d 1147, 2015 Miss. LEXIS 348 (Miss. 2015).

After a worker got a workers' compensation award against an employer, res judicata barred the worker's estate's subsequent claim under Miss. Code Ann. § 71-3-83(1) to hold the employer's principal personally liable because, inter alia, the cause of action was the same, as judgment was sought against the principal in the first case. Jarrett v. Dillard, 167 So. 3d 1207, 2014 Miss. App. LEXIS 380 (Miss. Ct. App. 2014), rev'd, 167 So. 3d 1147, 2015 Miss. LEXIS 348 (Miss. 2015).

After a worker got a workers' compensation award against an employer, res judicata barred the worker's estate's subsequent claim under Miss. Code Ann. § 71-3-83(1) to hold the employer's principal personally liable because, inter alia, the two suits' subject matter was the same. Jarrett v. Dillard, 167 So. 3d 1207, 2014 Miss. App. LEXIS 380 (Miss. Ct. App. 2014), rev'd, 167 So. 3d 1147, 2015 Miss. LEXIS 348 (Miss. 2015).

3. Statute of limitations.

After a worker got a workers' compensation award against an employer, the three-year statute of limitations in Miss. Code Ann. § 15-1-49(1) barred the worker's estate's subsequent claim under Miss. Code Ann. § 71-3-83(1) to hold the employer's principal personally liable because the worker and the estate waited 12 years after learning the employer had no insurance to assert the claim. Jarrett v. Dillard, 167 So. 3d 1207, 2014 Miss. App. LEXIS 380 (Miss. Ct. App. 2014), rev'd, 167 So. 3d 1147, 2015 Miss. LEXIS 348 (Miss. 2015).

RESEARCH REFERENCES

Am. Jur.
82 Am. Jur. 2d, Workers' Compensation § 608.

CJS.
101 C.J.S., Workmen's Compensation §§ 1489-1492.

§ 71-3-85. Workers' compensation commission.

(1) There is hereby created a commission to be known as the workmen's compensation commission, consisting of three (3) members, who shall devote their entire time to the duties of the office. The governor shall appoint the members of the commission, by and with the consent of the Mississippi State Senate, one (1) for a term of two (2) years, one (1) for a term of four (4) years, and one (1) for a term of six (6) years. Upon the expiration of each term as above set forth, the governor shall appoint a successor for a term of six (6) years, and thereafter the term of office of each commissioner shall be for six (6) years. One (1) member shall be a person who by reason of his previous vocation or affiliation can be classed as a representative of employers, and one (1) member shall be a person who by reason of his previous vocation or affiliation can be classed as a representative of employees. One (1) member shall be an attorney at law of recognized ability with at least five (5) years' active practice in Mississippi prior to his appointment. The governor shall designate the chairman of the commission, whose term of chairman shall run concurrently with his appointment as a commissioner.

The chairman shall be the administrative head of the commission and shall have the final authority in all matters relating to assignment of cases for hearing and trial and the administrative work of the commission and its employees, except in the promulgation of rules and regulations wherein the commission shall act as a body, and in the trial and determination of cases as otherwise provided.

Upon the expiration of the term of a commissioner, he shall continue to serve until his successor has been appointed. Because cumulative experience is conspicuously essential to the proper administration of a workmen's compensation law, it is declared to be in the public interest to continue workmen's compensation commissioners in office as long as efficiency is demonstrated. A commissioner may be removed for cause prior to the expiration of his term, but shall be furnished a written copy of the charges against him and shall be accorded a public hearing.

Each member of the commission and each administrative law judge shall receive an annual salary fixed by the legislature.

(2) A vacancy in the commission, if there remain two (2) members of it, shall not impair the authority of such two (2) members to act. In case of illness or continued absence for other reasons, the same authority of such two (2) members shall apply.

(3) The commission shall have the powers and duties necessary for effecting the purposes of this chapter, including the powers of a court of record for compelling the attendance of witnesses, examining them under oath, and

compelling the production of books, papers, documents and objects relevant to the determination of a claim for compensation, and the power to adopt rules and regulations and make or approve the forms relating to notices of injuries, payment of claims and other purposes. The authority of the commission and its duly authorized representatives to investigate and determine claims for compensation shall include the right to enter the premises where an injury occurred, to ascertain its causes and circumstances.

(4) The office of the commission shall be situated in the City of Jackson, but hearings may be held at such places as it may deem most convenient for the proper and speedy performance of its duties. The commission is authorized, if it deems it necessary for the convenient and efficient dispatch of business, to lease office space and facilities in other than publicly owned buildings.

(5) The commission shall adopt detailed rules and regulations for implementing the purposes of this chapter at hearings attended by the main parties interested. Such rules, upon adoption, shall be published and be at all reasonable times made available to the public and, if not inconsistent with law, shall be binding upon those participating in the responsibilities and benefits of the workmen's compensation law.

(6) The commission shall adopt or approve the forms required for administering the chapter, such notices of injury, application for benefits, receipts for compensation and all other forms needed to assure the orderly and prompt operation of the law, and may require the exclusive use of any or all such approved forms.

HISTORY: Codes, 1942, § 6998-43; Laws, 1948, ch. 354, § 37; Laws, 1950, ch. 412, § 15; Laws, 1956, ch. 345, § 2; Laws, 1958, ch. 478; Laws, 1962, ch. 474, § 1; Laws, 1966, ch. 445, § 18; Laws, 1980, ch. 475, § 2; reenacted, Laws, 1982, ch. 473, § 43; reenacted without change, Laws, 1990, ch. 405, § 45, eff from and after July 1, 1990.

Editor's Notes — Chapter 408 of Laws, 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission."

Cross References — Exemption of workers' compensation commission from provisions of open meetings law, see § 25-41-3.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Adoption of rules.
3. Failure to act.

1. In general.

Workers' compensation claimants failed to show that system of appointment of Commissioners to Workers' Compensation Commission, which required that one Commissioner be classified by prior affiliation or vocation as representative of employer, second Commissioner as representative of employees, and third Commissioner have no affiliation, injected bias into system. Warren v. Mississippi Workers' Compensation Comm'n, 700 So. 2d 608, 1997 Miss. LEXIS 496 (Miss. 1997).

While the Administrative Judge is generally, within the Workers' Compensation

Commission, the individual who conducts the hearing and hears the live testimony, the Commission itself is, in law, the finder of the facts, and on judicial review, the Commission's findings and decisions are subject to the normal deferential standards, notwithstanding the Administrative Judge's actions. Walker Mfg. Co. v. Cantrell, 577 So. 2d 1243, 1991 Miss. LEXIS 190 (Miss. 1991).

The Workers' Compensation Commission has no authority to grant declaratory judgments, render advisory opinions, or try equitable issues, or other issues, outside the statutes. Bullock v. Roadway Express, Inc., 548 So. 2d 1306, 1989 Miss. LEXIS 421 (Miss. 1989).

The workmen's compensation commission, and not the attorney referee, is the trier of facts in compensation cases, and this section [Code 1942, § 6998-43] specifically provides for hearings to be held before a three-man commission, and at least two commissioners must agree before an adjudication of the facts and an award can be made, and the commission shall act in a body. Bruton v. Mississippi Workmen's Compensation Com., 253 Miss. 694, 178 So. 2d 673, 1965 Miss. LEXIS 1034 (Miss. 1965).

2. Adoption of rules.

An injured employee's claim for worker's compensation was properly dismissed pursuant to an administrative rule where the claimant refused to answer interrogatories for more than a year; former § 13-1-201 did not expressly or by implication prevent the Workmen's Compensation Commission from adopting the statutory discovery procedures as a part of its rules of procedure. Further, written interrogatories were a part of the available discovery procedures in force and effect when the administrative rule at issue was enacted and at all other pertinent times. Flemon v. State Poultry Co., 373 So. 2d 273, 1979 Miss. LEXIS 2269 (Miss. 1979).

In view of commission rule, adopted pursuant to this section [Code 1942, § 6998-43], apportionment on account of a pre-existing injury cannot be made without basis in pleading and proof. Mississippi Federated Cooperatives v. Roberts, 248 Miss. 732, 160 So. 2d 922, 1964 Miss. LEXIS 298 (Miss. 1964).

Dismissal of a claim pursuant to a rule adopted under this section [Code 1942, § 6998-43], for failure of claimant to appear at a hearing, held proper. Barq's Bottling Co. v. Broussard, 239 Miss. 561, 124 So. 2d 294, 1960 Miss. LEXIS 322 (Miss. 1960).

The workmen's compensation board had the power under the workmen's compensation statute to promulgate the rule that any insurance carrier having issued a policy to an employer and desiring to cancel or terminate same shall be required to give three days prior notice thereof in writing to the commission and to the employer. T. H. Mastin & Co. v. Russell, 214 Miss. 700, 59 So. 2d 321, 1952 Miss. LEXIS 509 (Miss. 1952).

3. Failure to act.

Where the workmen's compensation commission failed to make a decision on the facts of a case as required by this section [Code 1942, § 6998-43], the cause must be remanded to the commission for a proper order. Bruton v. Mississippi Workmen's Compensation Com., 253 Miss. 694, 178 So. 2d 673, 1965 Miss. LEXIS 1034 (Miss. 1965).

When one commissioner recuses himself or fails to act, it is impossible for the workmen's compensation commission to be the determiner of facts where the two remaining commissioners cannot agree upon the facts, and on the decision and order of the attorney referee based thereon. Bruton v. Mississippi Workmen's Compensation Com., 253 Miss. 694, 178 So. 2d 673, 1965 Miss. LEXIS 1034 (Miss. 1965).

RESEARCH REFERENCES

Am. Jur.

82 Am. Jur. 2d, Workers' Compensation §§ 63 et seq.

CJS.

100 C.J.S., Workmen's Compensation §§ 700, 702, 716 et seq.

§ 71-3-87. Official bond.

Members of the commission shall give bond in the sum of Ten Thousand Dollars ($10,000.00) of a surety company authorized to do business in the state, for the faithful performance of their duties. The premium upon such bonds shall be paid out of the workmen's compensation administration fund.

HISTORY: Codes, 1942, § 6998-44; Laws, 1948, ch. 354, § 38; reenacted without change, Laws, 1982, ch. 473, § 44; reenacted without change, Laws, 1990, ch. 405, § 46, eff from and after July 1, 1990.

Editor's Notes — Chapter 408 of Laws of 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission."

§ 71-3-89. Seal.

The commission shall have a seal for authentication of its orders, awards, and proceedings, upon which shall be inscribed the words "workmen's compensation commission-Mississippi-seal," and it shall be judicially noticed.

HISTORY: Codes, 1942, § 6998-45; Laws, 1948, ch. 354, § 39; reenacted without change, Laws, 1982, ch. 473, § 45; reenacted without change, Laws, 1990, ch. 405, § 47, eff from and after July 1, 1990.

Editor's Notes — Chapter 408 of Laws of 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission."

§ 71-3-91. Traveling expenses.

Commissioners and employees of the commission shall receive their necessary traveling expenses and costs of subsistence while traveling on official business and away from their designated station. Expense accounts shall be sworn to by the person presenting them and, upon approval by the chairman of the commission, shall be allowed and paid as provided in Section 71-3-97.

HISTORY: Codes, 1942, § 6998-46; Laws, 1948, ch. 354, § 40; Laws, 1950, ch. 412, § 16; reenacted without change, Laws, 1982, ch. 473, § 46; reenacted without change, Laws, 1990, ch. 405, § 48, eff from and after July 1, 1990.

§ 71-3-93. Administrative staff.

The commission shall appoint such officers and employees as are necessary adequately to administer the Workers' Compensation Law, including not more than eight (8) administrative judges to be appointed by the commission with the consent of the Governor and an executive director who shall serve at the will of the commission and shall have such administrative duties as are assigned by the commission, a secretary, a statistician, a rehabilitation unit, and any other employees deemed essential to the administration of the law including court reporters whose salaries shall be the same as set for court reporters for circuit and chancery courts by Section 9-13-19. The annual salary of the executive director shall be equal to that of an administrative judge. An administrative judge shall be a member of the Mississippi State Bar and shall have a minimum of three (3) years' experience in the practice of law.

All salaries not specifically fixed by law shall be set by the commission. The establishing of a merit system or career service for employees of the commission is declared to be in the public interest because of the length of time required for understanding the details and problems involved in administering this legislation. The commission shall establish and enforce fair and reasonable rules for the appointment, promotion and demotion of personnel. All employees of the commission with the exception of medical consultants shall devote their entire time to the duties of their office.

For the purpose of conducting hearings and making decisions upon claims, the administrative judge or administrative judges appointed by the commission shall have the authority of a commissioner.

HISTORY: Codes, 1942, § 6998-47; Laws, 1948, ch. 354, § 41; Laws, 1950, ch. 412, § 17; Laws, 1956, ch. 345, § 3; Laws, 1962, ch. 474, § 2; Laws, 1966, ch. 455, § 1; Laws, 1974, ch. 384; Laws, 1977, ch. 381; Laws, 1978, ch. 428, § 1; Laws, 1980, ch. 475, § 3; reenacted, Laws, 1982, ch. 473, § 47; reenacted without change, Laws, 1990, ch. 405, § 49; Laws, 1993, ch. 552, § 3, eff from and after passage (approved April 13, 1993).

Cross References — Salaries of Workers' Compensation Commission, see § 25-3-3.

JUDICIAL DECISIONS

1. In general.

There was substantial evidence to support the decision of the Mississippi Workers' Compensation Commission to affirm the administrative law judge's (AJ) decision to deny an employee disability benefits because the AJ, acting under the authority of the Commission, was entitled to rely on his personal experience in making reasonable inferences and in his determination to deny benefits. Sterling v. Eaton Corp., 109 So. 3d 1096, 2013 Miss. App. LEXIS 130 (Miss. Ct. App. 2013).

No procedural invalidity existed where a commissioner wrote the factual summary for the administrative law judge as the judge wrote the fact-findings and legal conclusions, and the commissioner who wrote the summary recused herself from the appeal. Kitchens v. Jerry Vowell Logging, 874 So. 2d 456, 2004 Miss. App. LEXIS 486 (Miss. Ct. App. 2004).

An administrative law judge, as affirmed by the Workers' Compensation Commission and the circuit court, erred as a matter of law when he specifically stated that a hearing on an injured employee's motion to consider the need for additional medical treatment at the employer's expense under General Rule 9 was limited to whether the employee was suffering from improper medical treatment or lack of medical treatment, and then proceeded to make findings on maximum medical recovery and apportionment; an administrative law judge may not announce a limited purpose of a hearing, require the litigants to argue under limitation, and then decide the whole of the case including the time of maximum recovery apportionment and compensation. Monroe v. Broadwater Beach Hotel, 593 So. 2d 26, 1992 Miss. LEXIS 11 (Miss. 1992).

OPINIONS OF THE ATTORNEY GENERAL

As to which legislation, Miss. Code Section 71-3-93 or Senate Bill No. 2114 amending Miss. Code Section 25-3-33 [Repealed], will govern and determine annual salary to be paid to Executive Director of Commission, it is well settled that amendment which is in conflict with previous legislation supersedes any inconsistent provisions of previous legislation; that is, in situation such as this, when legislation is enacted on same subject matter and there is conflict, law approved last in time prevails, which in this case is Senate Bill No. 2114 which amends Miss. Code Section 25-3-33 [Repealed]. Porter, June 17, 1993, A.G. Op. #93-0395.

Sections 71-3-55(2) and 71-3-93 leave to the discretion of the Commission the selection of both the method used to create adequate records of its hearings and other proceedings and the determination of which employees are necessary and essential to administering the work of the Commission. Porter, November 22, 1996, A.G. Op. #96-0766.

Language in appropriation bills, which appropriate money to the Workers' Compensation Commission for salaries, wages, and benefits and directs that they be expended "in compliance with the policies established by the State Personnel Board and conditions placed on such expenditures," reflects legislative intent that the Workers' Compensation Commission abide by the personnel rules and regulations of the State Personnel Board rather than its own rules. Minor, April 7, 2000, A.G. Op. #2000-0177.

The State Personnel Board statutes, Sections 25-9-101 et seq., supersede the conflicting provisions of Section 71-3-93, and the Workers' Compensation Commission may not establish and enforce its own rules and procedures that would conflict with State Personnel Board regulations for hiring, firing, appointment, promotion, demotion, and payment of personnel. Minor, April 7, 2000, A.G. Op. #2000-0177.

RESEARCH REFERENCES

CJS.

100 C.J.S., Workers' Compensation § 708, 709.

§ 71-3-95. Payment of operating expense.

(1) The commission shall make such expenditures as may be necessary for the adequate administration of this chapter, including salaries and traveling expense, the cost of personal services, office rent at the seat of government and elsewhere, the purchase of books, periodicals, office equipment and supplies, printing and binding reports, the cost of membership in official organizations, and other purposes. All expenditures of the commission in the administration of this chapter shall be allowed and paid out of the State General Fund as provided in Section 71-3-100, upon the presentation of itemized vouchers therefor approved by the chairman of the commission.

(2) The commission is authorized, in its discretion, to transfer a sum or sums not to exceed Two Hundred Thousand Dollars ($200,000.00) to the Second Injury Fund. The commission is further authorized, in its discretion, to replace any funds so transferred in the event that funds become available.

HISTORY: Codes, 1942, § 6998-48; Laws, 1948, ch. 354, § 42; Laws, 1950, ch. 412, § 18; reenacted without change, Laws, 1982, ch. 473, § 48; Laws, 1984, ch. 497, § 2; Laws, 1987, ch. 361, § 7; reenacted without change, Laws, 1990, ch.

405, § 50; Laws 2017, 1st Ex Sess, ch. 7, § 28, eff from and after passage (approved June 23, 2017).

Editor's Notes — The name of the Second Injury Fund, referred to in subsection (2), was amended to be the Second Injury Trust Fund by Section 27 of Chapter 7, Laws of 2017, 1st Extraordinary Session, effective June 23, 2017. See Section 71-3-73.

§ 71-3-97. Collection of civil penalties authorized by chapter; deposit of civil penalties into State General Fund.

All civil penalties provided in this chapter, if not voluntarily paid, may be collected by civil suit brought by the commission, and shall be paid into the State General Fund.

HISTORY: Codes, 1942, § 6998-49; Laws, 1948, ch. 354, § 43; reenacted without change, Laws, 1982, ch. 473, § 49; reenacted without change, Laws, 1990, ch. 405, § 51; Laws 2017, 1st Ex Sess, ch. 7, § 29, eff from and after passage (approved June 23, 2017).

Cross References — Civil penalty for pursuit of frivolous claim to be deposited into Administrative Expense Fund, see § 71-3-59.

Civil penalty for failure to secure payment of workers' compensation benefits to be deposited into Administrative Expense Fund, see § 71-3-83.

Transfer of funds to the Second Injury Trust Fund, see § 71-3-95.

Applicability of this section to per diem and mileage payments to members of the Medical Advisory Board of the Workers' Compensation Commission, see § 71-3-115.

Applicability of this section to cover the expenses of a study of alternative systems of workers' compensation, see § 71-3-117.

§ 71-3-99. Budget and collection procedure.

(1) The commission shall estimate annually in advance the amounts necessary for the administration of this chapter, in the following manner:

(a) The commission shall, as soon as practicable after the first day of January in each year, determine the expense of administration of this chapter for the one-year period preceding the first day of January. The expense of administration for such period shall be used as the basis for determining the amount to be assessed against each carrier and self-insurer in order to provide for the expenses of the administration of this chapter for the one-year period.

(b) Each carrier and self-insurer shall be assessed Two Hundred Fifty Dollars ($250.00). The proceeds of such assessment shall be deducted from the estimate of total expenses and the remaining expenses of administration shall be prorated among the carriers writing compensation insurance in the state and self-insurers. The gross claims for compensation and medical services and supplies paid by the insurance carriers and self-insurers is the basis for computing the amount to be assessed, in the proportion that the total gross claims for compensation and medical services and supplies paid by such carrier or self-insurer during the preceding one-year period bore to the total gross claims for compensation and medical supplies and services paid by all carriers and self-insurers during such period. This amount may be assessed as a specific amount or as a percentage of gross claims for compensation and medical supplies and services paid by the insurance carriers and self-insurers as the commission may direct, and shall be such amount as shall be reasonably necessary to defray the necessary expense of such administration.

(2) The commission shall provide by regulation for the collection of the amounts assessed against each carrier and self-insurer. Such amounts shall be paid within thirty (30) days from the date that notice is served upon such carrier. If such amounts are not paid within such period, there may be assessed, for each thirty (30) days the amount so assessed remains unpaid, a civil penalty equal to ten percent (10%) of the amount so unpaid, which shall be collected at the same time and as a part of the amount assessed.

(3) If any carrier or self-insurer fails to pay the amounts assessed against it under the provisions of this section within sixty (60) days from the time such notice is served, the commission may suspend or revoke the authorization to insure compensation or to be self-insured.

(4) All amounts collected under the provisions of this section shall be paid into the State General Fund as provided in Section 71-3-100.

(5) The commission may require from each carrier and self-insurer, at such time and in accordance with regulations as the commission may prescribe, reports in respect to all payments of compensation and medical supplies and services by such carriers or self-insurers during each prior period, and may determine the amounts paid by each carrier and self-insurer and the amounts paid by all carriers and self-insurers during such period.

(6) Every carrier and self-insurer shall file with the commission on or before the first day of March of each year, a statement on the prescribed forms showing the gross claims for compensation and medical services and supplies paid by such carrier or self-insurer during the preceding one-year period ending on the thirty-first day of December. Any carrier or self-insurer which neglects to make and file its annual written statement within the time provided in this chapter shall pay to the commission Twenty Dollars ($20.00) for each day's neglect.

HISTORY: Codes, 1942, § 6998-50; Laws, 1948, ch. 354, § 44; Laws, 1950, ch. 412, § 19; Laws, 1978, ch. 320, § 1; reenacted, Laws, 1982, ch. 473, § 50; Laws, 1987, ch. 361, § 8; reenacted without change, Laws, 1990, ch. 405, § 52; Laws, 2017, 1st Ex Sess, ch. 7, § 30, eff from and after passage (approved June 23, 2017).

Cross References — Funding Insurance Integrity Enforcement Bureau, see § 7-5-305.

Administrative Expense Fund, see § 71-3-97.

Application of this section to the collection of an assessment against members of the workers' compensation self-insurer guaranty association, see § 71-3-163.

Deposit of civil penalties collected under this chapter to be paid into State General Fund, see § 71-3-97.

RESEARCH REFERENCES

Am. Jur.
82 Am. Jur. 2d, Workers' Compensation §§ 615 et seq.

CJS.
100 C.J.S., Workers' Compensation §§ 646, 647 et seq.

§ 71-3-100. Payment and deposit in State General Fund of funds received by Workers' Compensation Commission; funding of commission expenses.

All funds received by the Workers' Compensation Commission, as established by Section 71-3-85 et seq., shall be paid to the State Treasurer, who shall issue receipts therefor and who shall deposit such funds into the State General Fund in the State Treasury.

From and after July 1, 2016, the expenses of the Workers' Compensation Commission shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized by Section 71-3-85 et seq. shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, the Workers' Compensation Commission shall not charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of Section 71-3-85 et seq.

HISTORY: Laws, 1973, ch. 381, § 4; reenacted, Laws, 1982, ch. 473, § 51; Laws, 1984, ch. 488, § 272; reenacted without change, Laws, 1990, ch. 405, § 53; Laws, 2016, ch. 459, § 67; Laws 2017, 1st Ex Sess, ch. 7, § 31, eff from and after passage (approved June 23, 2017).

Editor's Notes — Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Cross References — Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

§ 71-3-101. Registration of insurance companies.

Each insurance company and all other carriers which desire to write workmen's compensation insurance in compliance with this chapter shall be required, before writing such insurance, to register with the workmen's compensation commission and pay a registration fee of One Hundred Dollars ($100.00). This shall be deposited by the commission in the administration expense fund.

HISTORY: Codes, 1942, § 6998-51; Laws, 1948, ch. 354, § 45; reenacted without change, Laws, 1982, ch. 473, § 52; reenacted without change, Laws, 1990, ch. 405, § 54, eff from and after July 1, 1990.

Editor's Notes — Chapter 408 of Laws of 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission."

Cross References — Exemption of national guard from payment of registration fee, see § 33-1-29.

Administrative Expense fund, see § 71-3-97.

RESEARCH REFERENCES

Am. Jur.

82 Am. Jur. 2d, Workers' Compensation § 616.

CJS.

100 C.J.S., Workers' Compensation §§ 646, 647.

§ 71-3-103. Annual report.

The commission shall each calendar year make a report to the governor upon the operation of this chapter, including suggestions and recommendations as to improvements in the law and administration, a detailed statement of receipts and disbursements, and an exposition of industrial injury experience and compensation and medical cost.

HISTORY: Codes, 1942, § 6998-52; Laws, 1948, ch. 354, § 46; Laws, 1950, ch. 412, § 20; reenacted without change, Laws, 1982, ch. 473, § 53; reenacted without change, Laws, 1990, ch. 405, § 55, eff from and after July 1, 1990.

RESEARCH REFERENCES

Am. Jur.

82 Am. Jur. 2d, Workers' Compensation § 64.

CJS.

100 C.J.S., Workers' Compensation §§ 701, 706-714, 717.

§ 71-3-105. Rehabilitation.

The commission shall cooperate with federal, state, and local agencies in the rehabilitation of handicapped workers, and shall promptly report to the proper authority industrial injury cases in which retraining or job placement may be needed.

HISTORY: Codes, 1942, § 6998-53; Laws, 1948, ch. 354, § 47; reenacted without change, Laws, 1982, ch. 473, § 54; reenacted without change, Laws, 1990, ch. 405, § 56, eff from and after July 1, 1990.

Cross References — Duty of state board to co-operate with federal government in vocational rehabilitation programs, see § 37-33-21.

Maintenance for employees undergoing vocational rehabilitation, see § 71-3-19.

RESEARCH REFERENCES

CJS.

99 C.J.S., Workers' Compensation §§ 545-549, 551-555, 582, 561, 592.

§ 71-3-107. Compensation and death benefits for minors illegally employed.

Compensation and death benefits shall be double the amount otherwise payable if the injured employee at the time of the injury is a minor under eighteen (18) years of age employed, permitted, or suffered to work in violation of any provision of the Mississippi labor laws. The employer alone and not the insurance carrier shall be liable for such increased compensation or increased death benefits. Any provision in an insurance policy undertaking to relieve an employer from such increased liability shall be void. The provisions of this section shall not apply, and double compensation and double death benefits shall not be payable, for death or injury to an employee under eighteen (18) years of age employed in the following programs:

(a) Students fourteen (14) years of age and over and regularly enrolled in an accredited secondary school or college and employed between regular terms or semesters with the written consent of their parent or parents or person standing in loco parentis.

(b) Students fourteen (14) years of age and over and employed in on-the-job training as a part of a regular program of education in an accredited secondary school with the written consent of their parent or parents or person standing in loco parentis.

HISTORY: Codes, 1942, § 6998-54; Laws, 1948, ch. 354, § 48; 1950, ch. 412, § 21; 1968, ch. 560, § 1; reenacted without change, Laws, 1982, ch. 473, § 55; reenacted without change, Laws, 1990, ch. 405, § 57, eff from and after July 1, 1990.

Cross References — Regulation of child labor, see §§ 71-1-17 through 71-1-21.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Illustrative cases.

1. In general.

In a claim for double workmen's compensation benefits arising out of the death of a 16-year old boy who was employed by a corporation which cultivated the soil to produce grain which it used to feed cattle which it later sold, the corporation was not a manufacturing establishment within the meaning of § 71-1-17 where the harvested grain was not converted from a raw product into a substantially different substance or material; since the decedent's work activity of entering a grain silo to level shelled corn was incidental to the corporation's farming activities, the decedent's employment was agricultural in nature and the doubt compensation benefits provided by § 71-3-107 were not recoverable. Stafford v. U. S. Cattle Corp., 389 So. 2d 923, 1980 Miss. LEXIS 2116 (Miss. 1980).

2. Illustrative cases.

A 17-year-old boy employed in a cotton gin, whose hours of labor violated the provisions of Code 1942, § 6986, was entitled to double compensation benefits for injuries he sustained in the scope and course of his employment. Lopanic v. Berkeley Cooperative Gin Co., 191 So. 2d 108, 1966 Miss. LEXIS 1200 (Miss. 1966).

RESEARCH REFERENCES

ALR.
Insurance carrier's liability for part of employer's liability attributable to violation of law or other misconduct on his part. 1 A.L.R.2d 407.

Am. Jur.
82 Am. Jur. 2d, Workers' Compensation § 591.

CJS.
99 C.J.S., Workers' Compensation §§ 598, 601.

§ 71-3-109. Extraterritorial application.

(1) If an employee who has been hired or is regularly employed in this state receives personal injury by accident arising out of and in the course of his employment while temporarily employed outside of this state, he or his dependents in case of his death shall be entitled to compensation according to the law of this state. This provision shall apply only to those injuries received by the employee within six (6) months after leaving this state unless, prior to the expiration of such six (6) months' period, the employer has filed with the commission of Mississippi notice that he has elected to extend such coverage a greater period of time.

(2) The provisions of this section shall not apply to an employee whose departure from this state is caused by a permanent assignment or transfer.

(3) Any employee who has been hired or is regularly employed outside of this state and his employer shall be exempted from the provisions of this chapter while such employee is temporarily within this state doing work for his employer if such employer has furnished workmen's compensation insurance coverage under the workmen's compensation or similar laws for a state other than this state so as to cover such employee's employment while in this state, provided the extra-territorial provisions of this chapter are recognized in such other state and provided employers and employees who are covered in this state are likewise exempted from the application of the workmen's compensation or similar laws of such other state. The benefits under the workmen's compensation or similar laws of such other state shall be the exclusive remedy against such employer for any injury, whether resulting in death or not, received by such employee while working for such employer in this state.

HISTORY: Codes, 1942, § 6998-55; Laws, 1948, ch. 354, § 49; reenacted without change, Laws, 1982, ch. 473, § 56; reenacted without change, Laws, 1990, ch. 405, § 58, eff from and after July 1, 1990.

Editor's Notes — Chapter 408 of Laws of 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission."

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Mississippi injury of nonresident employee.
3. Out-of-state injury of Mississippi employee.
4. Injury of employee permanently assigned or transferred out of Mississippi.
5. No relation of employment to Mississippi.

1. In general.

An employee who was not hired in Mississippi, did no work in that state, nor was injured therein cannot claim the benefits of the Mississippi Workmen's Compensation Law, for either hiring or regular employment in the state is essential to recovery under this section [Code 1942, § 6998-55]. L. & A. Constr. Co. v. McCharen, 198 So. 2d 240, 1967 Miss. LEXIS 1256 (Miss.), cert. denied, 389 U.S. 945, 88 S. Ct. 310, 19 L. Ed. 2d 301, 1967 U.S. LEXIS 428 (U.S. 1967).

It is not essential that the accident occurs in Mississippi in order to allow the Mississippi Workmen's Compensation Law to operate. Burnham Van Service, Inc. v. Dependents of Moore, 250 Miss. 165, 164 So. 2d 733, 1964 Miss. LEXIS 453 (Miss. 1964).

The Mississippi Workmen's Compensation Law was adopted in the exercise of the state's police power to provide for the welfare of its citizens and others performing labor within its borders, and the subject matter is one upon which the state is competent to legislate. Mandle v. Kelly, 229 Miss. 327, 92 So. 2d 246, 1957 Miss. LEXIS 303 (Miss. 1957).

The full faith and credit clause does not go so far as to require a state to withhold the application of its workmen's compensation laws because they conflict with the workmen's compensation laws of another state. Mandle v. Kelly, 229 Miss. 327, 92 So. 2d 246, 1957 Miss. LEXIS 303 (Miss. 1957).

2. Mississippi injury of nonresident employee.

Since the exemption in subsection (c) of this section [Code 1942, § 6998-55] was not applicable where an employee, employed in Georgia, sustained a disability while operating his employer's truck upon Mississippi highways and had received extensive medical treatment within the state for which payment had not been received, the Mississippi Workmen's Compensation Law applied, notwithstanding the Georgia employer's contention that the application of the Law would violate the full faith and credit clause of the United States Constitution, would constitute an interference with, or impairment of, the right to contract, and would interfere with interstate commerce. Mandle v. Kelly, 229 Miss. 327, 92 So. 2d 246, 1957 Miss. LEXIS 303 (Miss. 1957).

The exemption provided in subsection (c) of this section [Code 1942, § 6998-55] was inapplicable where an employee, employed in Georgia, was injured while temporarily in Mississippi doing work for his employer, and the Georgia Workmen's Compensation Act was silent as to the extra-territorial provisions of the workmen's compensation of other states, and there was no provision for exempting from its application employees and employers when the employee had been hired and was regularly employed outside of Georgia, and such employee was injured while temporarily within Georgia doing work for his employer. Mandle v. Kelly, 229 Miss. 327, 92 So. 2d 246, 1957 Miss. LEXIS 303 (Miss. 1957).

Where, under the law of Georgia where its contract was made, the workmen's compensation carrier was not obligated to pay to any person any benefit under any compensation law except the Georgia act, the liability of the carrier could not be extended by application of the Mississippi Workmen's Compensation Law contrary to the express terms of the policy, since to do so would violate the due process clause of the United States Constitution. Mandle v. Kelly, 229 Miss. 327, 92 So. 2d 246, 1957 Miss. LEXIS 303 (Miss. 1957).

Where an employee who was hired in Louisiana sustained injuries in Mississippi, compensation was properly awarded under the Workmen's Compensation Law despite the fact that Louisiana's workmen's compensation law was given an extra-territorial effect by the courts of that state and it was purported to be an exclusive remedy, where it was not shown that employee would have an available remedy for his injury. La Dew v. La Borde, 216 Miss. 598, 63 So. 2d 56, 1953 Miss. LEXIS 674 (Miss. 1953).

Where the Workmen's Compensation Law provides that employee regularly employed outside of the state, receiving injury when in state temporarily, shall be exempt if covered under the law of the state of hiring and is covered by that state under extra-territorial provisions, this provision did not exempt an employee hired in Louisiana where it was not shown that the compensation act would be given extra-territorial recognition by Louisiana. La Dew v. La Borde, 216 Miss. 598, 63 So. 2d 56, 1953 Miss. LEXIS 674 (Miss. 1953).

3. Out-of-state injury of Mississippi employee.

Notwithstanding that the employment contract was accepted by the employer in another state and that the fatal injury was sustained by the employee while out of the state, the Mississippi Workmen's Compensation Law applied where it was shown that the employee truck driver was a Mississippi resident, the employment contract was initiated in Mississippi, and that the employee's base of operations was in Burnham Van Service, Inc. v. Dependents of Moore, 250 Miss. 165, 164 So. 2d 733, 1964 Miss. LEXIS 453 (Miss. 1964).

An employee hired and regularly employed in Mississippi is entitled to compensation under the Mississippi Workmen's Compensation Law for injuries received while temporarily working in another state for his Mississippi employer. Martin v. L. & A. Contracting Co., 249 Miss. 441, 162 So. 2d 870, 1964 Miss. LEXIS 405 (Miss. 1964).

An employer and his insurer are estopped to deny coverage of an employee temporarily working out of the state for more than six months, where the employer agreed to continue coverage but failed to give the commission notice of extension, and reinsurance obtained by the insurer was in effect at the employee's death. Dependents of Dawson v. Delta Western Exploration Co., 245 Miss. 335, 147 So. 2d 485, 1962 Miss. LEXIS 556 (Miss. 1962).

A claimant, a Louisiana resident employed in Mississippi by a contracting company engaged in laying pipe lines from Louisiana through Mississippi to a point in Tennessee, who, after the completion of his work in Mississippi, was transferred to Tennessee where he was injured on the last day of his Tennessee employment of less than two months, was entitled to compensation under the Mississippi Workmen's Compensation Law since the Tennessee assignment was only temporary. Houston Contracting Co. v. Reed, 231 Miss. 213, 95 So. 2d 231, 1957 Miss. LEXIS 507 (Miss. 1957).

A Mississippi resident, employed in Mississippi by an out of state employer performing Mississippi River construction work both in Mississippi and Louisiana, who, following the completion of the Mississippi phase of the work, was transferred to Louisiana where his employment was to continue only until the construction work was there completed, and who, some 23 days after his transferral, sustained injuries in Louisiana in an accident arising out of and in the course of his employment, was entitled to benefits of the Mississippi Workmen's Compensation Law, notwithstanding a stipulation that the employer might have obtained future out of the state contracts where claimant's service might have been used had he not been injured. Winborn v. R. B. Tyler Co., 231 Miss. 166, 94 So. 2d 340, 1957 Miss. LEXIS 501 (Miss. 1957).

4. Injury of employee permanently assigned or transferred out of Mississippi.

Mississippi Workers' Compensation Commission lacked jurisdiction when a claimant, who was living in Mississippi, was injured in an automobile accident in Texas while working as a truck driver for a company located in Texas because the claimant was not temporarily working outside of Mississippi. The claimant's departure from Mississippi was caused by a permanent assignment in Texas, and the claimant's only contact with Mississippi consisted of communications with the company when the claimant was in Mississippi and seeking employment. Stewart v. Dynamic Envtl. Servs., LLC, 245 So. 3d 543, 2018 Miss. App. LEXIS 31 (Miss. Ct. App. 2018), cert. denied, 2018 Miss. LEXIS 289 (Miss. June 21, 2018).

In considering the application of subsection (b) of this section [Code 1942, § 6998-55], the question is not whether the departure from Mississippi was temporary or permanent but whether the assignment or transfer elsewhere was temporary or permanent, i. e., the determinative fact is whether the assignment or transfer elsewhere was permanent, not whether claimant had any reasonable expectation of returning to Mississippi in his employment with the employer. Winborn v. R. B. Tyler Co., 231 Miss. 166, 94 So. 2d 340, 1957 Miss. LEXIS 501 (Miss. 1957).

5. No relation of employment to Mississippi.

Dismissal of the employee's workers' compensation claim in Indiana for lack of jurisdiction under Miss. Code Ann. § 71-3-109(1) was proper where all work performed under the contract was performed in Indiana and the injury occurred in Pennsylvania; none of the contractual documents relating to the employee's employment originated in Mississippi or had any relation to the state, nor did it appear that there was any likelihood that Mississippi would have become the focus of any of the employee's duties for the employer. Rice v. Burlington Motor Carriers, 839 So. 2d 602, 2003 Miss. App. LEXIS 152 (Miss. Ct. App. 2003).

RESEARCH REFERENCES

ALR.

Workmen's compensation act: voluntary payment of compensation under statute of one state as bar to claim or ground for reduction of claim of compensation under statute of another state. 8 A.L.R.2d 628.

Am. Jur.

82 Am. Jur. 2d, Workers' Compensation §§ 70 et seq.

CJS.

99 C.J.S., Workmen's Compensation §§ 62-67 et seq.

§ 71-3-111. Mississippi Workers' Compensation Assigned Risk Plan; commissioner's duties and responsibilities; temporary joint underwriting association.

(1) The Department of Insurance is directed to promulgate such rules and regulations as will enable the department to provide the "Mississippi Workers' Compensation Assigned Risk Plan" for the assignment of risks which in good faith are entitled to insurance under this chapter but which, because of unusual conditions and circumstances, are unable to obtain such insurance.

(2) The Commissioner of Insurance is designated as the Director of the Mississippi Workers' Compensation Assigned Risk Plan, and he shall design the assigned risk plan in such a manner that the plan should become self-supporting with no outside assessments. The commissioner may contract for a safety program.

(3) The Commissioner of Insurance is authorized to advertise and contract with any workers' compensation insurance carriers that are licensed and writing workers' compensation insurance within the State of Mississippi or providers of workers' compensation claims and loss control services within the

State of Mississippi to be servicing carriers. A servicing carrier shall provide all insurance services to employers insured under the plan as are otherwise rendered to those covered by policies voluntarily written by companies licensed to write workers' compensation insurance in the state.

(4) The Commissioner of Insurance may establish the "Mississippi Workers' Compensation Assigned Risk Pool" as a reinsurance mechanism for the "Mississippi Workers' Compensation Assigned Risk Plan" to accomplish the equitable distribution of all underwriting profit or loss of the plan to the companies licensed to write workers' compensation insurance in the state in direct proportion to their share of the total voluntary workers' compensation premiums written in the state. If established, all insurance companies licensed to write workers' compensation insurance under this chapter shall be members of and participants in this pool.

(5) The Commissioner of Insurance shall be responsible for the administration of both the "Mississippi Workers' Compensation Assigned Risk Plan" and the "Mississippi Workers' Compensation Assigned Risk Pool" but may designate an administrator of either or both, at his discretion. The Commissioner of Insurance may levy special assessments against the Mississippi Workers' Compensation Assigned Risk Pool, if necessary, to provide funding for administrative expenses.

(6) The commissioner is hereby authorized to establish a temporary joint underwriting association that shall consist of all insurers authorized to write, or engaged in writing, within this state on any basis, workers' compensation insurance as reported in the companies' annual statements.

The purpose of the association shall be to provide a market for workers' compensation insurance on a self-supporting basis.

The association shall not be established nor begin underwriting operations until the commissioner, after due hearing and investigation, has determined that workers' compensation insurance is not readily available. A determination that such insurance is not readily available shall be necessary before the association begins operations.

Upon such determination, the association shall be authorized to issue policies of workers' compensation insurance.

If the commissioner determines at any time that workers' compensation insurance can be made readily available in the voluntary market, the association shall then cease its underwriting operations for such workers' compensation insurance that has been determined to be available in the voluntary market.

The Commissioner of Insurance is authorized to promulgate rules and regulations to effectuate the purposes of this section, to include levying assessments, if necessary, to provide funding for start-up and administrative expenses.

HISTORY: Codes, 1942, § 6998-56; Laws, 1948, ch. 354, § 50; reenacted without change, Laws, 1982, ch. 473, § 57; reenacted without change, Laws, 1990, ch. 405, § 59; Laws, 1992, ch. 577, § 6, eff from and after passage (approved May 15, 1992).

JUDICIAL DECISIONS

1. In general.

Where an insured had formed a partnership upon the advice of the insurer's agent in order to obtain assigned risk workmen's compensation insurance, and he had informed the agent of a prior heart attack as his reason for requiring risk insurance, and the policy issued named the insured as an active partner and imposed an 8 percent surcharge on account of the risk, the failure of the insurer through its agent, to notify the insured that it would not write the assigned risk policy, instead issuing a policy purporting to comply with the explicit requirements of the application, changing the position of the insured to his detriment, and where the insurer continued to accept premiums and surcharges, the insurer was estopped from pleading that the insured was ineligible to recover benefits when he suffered a heart attack 5 years after the policy was issued, notwithstanding the absence of a partnership indorsement on the policy. Carter v. Carter, 246 So. 2d 520, 1971 Miss. LEXIS 1403 (Miss. 1971).

When accident happened to an employee, the employer had no compensation insurance and did not apply to the commission for a policy under the assigned risk plan, the employee had a right to bring a common-law action for damages in view of the fact that the employer failed to comply with the Workmen's Compensation Law. McCoy v. Cornish, 220 Miss. 577, 71 So. 2d 304, 1954 Miss. LEXIS 474 (Miss. 1954).

RESEARCH REFERENCES

Am. Jur.

82 Am. Jur. 2d, Workers' Compensation § 68.

CJS.

100 C.J.S., Workers' Compensation §§ 718, 719.

§ 71-3-113. Repealed.

Repealed by Laws, 1990, ch 405, § 60, eff from and after July 1, 1990.

§ 71-3-113. [Laws, 1979, ch. 301, § 48; Laws, 1982, ch. 473, § 58]

Editor's Notes — Former § 71-3-113 provided for the repeal of §§ 71-3-1 through 71-3-111.

§ 71-3-115. Medical Advisory Board; appointment; qualifications; expenses; recommendations.

(1) The Mississippi Workers' Compensation Commission shall appoint a medical advisory board to serve in an advisory capacity to study the possibility of the use of a medical fee schedule and to provide assistance to the commission in the performance of its functions relating to regulation of medical fees and charges pursuant to Section 71-3-15(3), Mississippi Code of 1972.

(2) Such board shall consist of five (5) members, one (1) appointed from each congressional district as they existed on January 1, 1985. Members of the board shall serve at the will and pleasure of the commission. All members of the medical advisory board shall be health care providers.

(3) Such board shall meet upon the call of the chairman of the Mississippi Workers' Compensation Commission. The board shall receive per diem and mileage as authorized by Section 25-3-69, Mississippi Code of 1972, for

attendance at called meetings to be paid from the administrative expense fund as provided in Section 71-3-97, Mississippi Code of 1972.

(4) The Mississippi Workers' Compensation Commission shall provide all office space and clerical assistance that might be required by the board.

(5) The Workers' Compensation Commission shall file a report with the Secretary of the Senate and the Clerk of the House of Representatives not later than December 15, 1987, concerning the result of the medical fee schedule study, together with any recommendations that the commission may consider necessary in regard to the regulation of medical fees and other costs. Such report shall contain any available comparative data generated by the commission or the medical advisory board.

HISTORY: Laws, 1987, ch. 361, § 1, eff from and after passage (approved March 19, 1987).

§ 71-3-117. Review and evaluation of alternative systems of workers' compensation; expenses; recommendations.

(1) The Mississippi Workers' Compensation Commission is hereby authorized and directed to review and make recommendations to the Legislature concerning alternative systems of workers' compensation for the State of Mississippi. The commission shall evaluate (a) the feasibility of group self-insurance and a self-insurance guarantee fund; (b) the deregulation of compensation insurance rates, including the impact of reserving practices, return on investments and profitability on workers' compensation ratemaking; (c) structural alternatives, such as the utilization of a state fund to operate the compensation system; and (d) the provisions of vocational rehabilitation services for covered employees. The Mississippi Department of Insurance shall cooperate and assist the Workers' Compensation Commission in preparing its recommendations.

(2) The Mississippi Workers' Compensation Commission may employ an actuary and such other staff as may be required to properly conduct this study. The expense of this study shall be paid from the administrative expense fund as provided in Section 71-3-97, Mississippi Code of 1972.

(3) The Mississippi Workers' Compensation Commission shall file its report with the Clerk of the House of Representatives and the Secretary of the Senate, together with recommendations for legislation, no later than December 15, 1987, with respect to the subject matter set forth in paragraphs (1)(a) and (1)(d) and no later than November 1, 1988, with respect to the subject matter set forth in paragraphs (1)(b) and (1)(c).

HISTORY: Laws, 1987, ch. 361, § 2, eff from and after passage (approved March 19, 1987).

§ 71-3-119. Workers' Compensation Advisory Council; qualifications; appointment; compensation; expenses; purpose; reports.

(1) There is hereby created the Mississippi Workers' Compensation Advi-

sory Council composed of individuals who, by their practice, experience and expertise, reflect the general composition of those involved with the workers' compensation field. The council shall consist of not more than twenty-five (25) members excluding the members of the Mississippi Workers' Compensation Commission, who shall be ex officio members. The members of such council shall be appointed by the Mississippi Workers' Compensation Commission within thirty (30) days of March 19, 1987, to a one-year term or until their successors are appointed and qualified. The members of the council shall select one of their number to be chairman. The advisory council shall consider and advise the Mississippi Workers' Compensation Commission on all matters related to the administration of the Mississippi Workers' Compensation Law. In its discretion the council may recommend to the Mississippi Workers' Compensation Commission changes it deems needed in the substance and administration of the Mississippi Workers' Compensation Law. The council shall report periodically to the Mississippi Workers' Compensation Commission regarding the performance of its duties and functions.

(2) The members of the advisory council shall receive the per diem under Section 25-3-69 for attendance of meetings of the council and shall be reimbursed for actual and necessary mileage and travel expenses incurred in the discharge of their duties pursuant to Section 25-3-41. The Mississippi Workers' Compensation Commission may provide personnel to aid the council in the performance of its functions. The amounts allowed to the members of the council for per diem compensation, travel and other council expenses is an expense incurred in the administration of the Mississippi Workers' Compensation Law.

HISTORY: Laws, 1987, ch. 361, § 3, eff from and after passage (approved March 19, 1987).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the third sentence of subsection (1). The words "the effective date of this act [Laws, 1987, Chapter 361. See Editor's Note below.]" were changed to "March 19, 1987." The Joint Committee ratified the correction at its May 16, 2002, meeting.

Cross References — Confidentiality of information relating to drug and alcohol testing, see § 71-7-15.

§ 71-3-121. Drug and alcohol testing; employer's right to demand or administer; presumptions; admissibility of results.

(1) In the event that an employee sustains an injury at work or asserts a work-related injury, the employer shall have the right to administer drug and alcohol testing or require that the employee submit himself to drug and alcohol testing. If the employee has a positive test indicating the presence, at the time of injury, of any drug illegally used or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to

label warnings, or eight one-hundredths percent (.08%) or more by weight volume of alcohol in the person's blood, it shall be presumed that the proximate cause of the injury was the use of a drug illegally, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or the intoxication due to the use of alcohol by the employee. If the employee refuses to submit himself to drug and alcohol testing immediately after the alleged work-related injury, then it shall be presumed that the employee was using a drug illegally, or was using a valid prescription medication(s) contrary to the prescriber's instructions and/or contrary to label warnings, or was intoxicated due to the use of alcohol at the time of the accident and that the proximate cause of the injury was the use of a drug illegally, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or the intoxication due to the use of alcohol of the employee. The burden of proof will then be placed upon the employee to prove that the use of drugs illegally, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or intoxication due to the use of alcohol was not a contributing cause of the accident in order to defeat the defense of the employer provided under Section 71-3-7.

(2) The results of the drug and alcohol tests, employer-administered or otherwise, shall be considered admissible evidence solely on the issue of causation in the determination of the use of drugs illegally, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or the intoxication due to the use of alcohol of an employee at the time of injury for workers' compensation purposes under Section 71-3-7.

(3) No cause of action for defamation of character, libel, slander or damage to reputation arises in favor of any person against an employer under the provisions of this section.

HISTORY: Laws, 1992, ch. 577, § 7; Laws, 2012, ch. 522, § 8, eff from and after July 1, 2012.

Editor's Notes — Laws of 2012, ch. 522, §§ 10 and 11, provide:

"SECTION 10. The Workers' Compensation Commission shall promulgate a written statement specifying the changes made to the Workers' Compensation Law by this act to every employer in this state subject to the Workers' Compensation Law. Within ten (10) days of receipt of this written statement from the Commission, every employer shall post the Commission's statement in a conspicuous place or places in and about his place or places of business and adjacent to the Notice of Coverage as required by Section 71-3-81.

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, and shall apply to injuries occurring on or after July 1, 2012."

RESEARCH REFERENCES

ALR.

Workers' Compensation: Validity, Construction, and Application of Statutes Providing that Worker Who Suffers Workplace Injury and Subsequently Tests Positive for Alcohol Impairment or Illegal

Drug Use Is Not Eligible for Workers' Compensation Benefits. 22 A.L.R. 6th 329.

§ 71-3-123. Report of commissioner on assigned risk plan and safety programs.

The Commissioner of Insurance shall submit a report consisting of the condition of the assigned risk plan and the safety programs established by insurers in accordance with Chapter 577, Laws of 1992 to the Senate and House Insurance Committees by January 1 of each year, beginning January 1, 1993.

HISTORY: Laws, 1992, ch. 577, § 8, eff from and after passage (approved May 15, 1992).

Editor's Notes — Laws of 1992, ch. 577, added §§ 71-3-121 through 71-3-127, and amended several code sections. For a complete list of code sections affected by ch. 577, see Statutory Tables Volume, Table B, allocation of acts, 1992.

§ 71-3-125. Workers' compensation claims offices; provision of same services by contract; waiver.

(1) Each insurance carrier or commission approved self-insured employer shall maintain a workers' compensation claims office, subject to the waiver provisions herein, within the borders of the State of Mississippi beginning July 1, 1993. Alternatively, each insurance carrier or commission approved self-insured employer may provide by contract the same services within the borders of the State of Mississippi beginning July 1, 1993. This claims office shall maintain workers' compensation claims files and shall be the office responsible to the Mississippi Workers' Compensation Commission for the proper filing of all commission forms for the employer/insureds. This office shall be the sole contact for the commission for the administration of all claims filed within the jurisdiction of the Mississippi Workers' Compensation Commission. Authority to issue checks and to pay claims shall be vested in personnel located within the State of Mississippi.

The insurance carrier and self-insured employer shall notify the commission of the address of its claims office before July 1, 1992, and shall report any subsequent changes of address before the effective date of the change. After October 1, 1992, no processing or payment of workers' compensation claims shall occur outside the State of Mississippi without the specific written waiver by the commission.

Waiver requests must be submitted to the commission in writing and shall not be considered unless the applicant has exercised claims management and filing practices that illustrate proper compliance with the law and other commission regulations. Proper compliance shall be measured by the commission by continued monitoring of the timeliness of reporting by the carrier/self-insured employer and by monitoring the resolution, or lack thereof, of written complaints regarding noncompliance to all aspects of the Mississippi Workers'

Compensation Law and rules of the commission and orders of the administrative law judges, commission or court.

The commission shall prepare a report at least twice each year as to the filing performance, first payment performance and problems resolution of each carrier and self-insured employer during the calendar year beginning January 1, 1993, and each successive year. Carrier's and self-insured employer's performance as measured in each calendar year shall be the basis for approval or continuation of the waiver beginning on July 1 of each successive year.

Any and all waivers previously granted by the commission under prior versions of this section are subject to review under this section in effect at the time the waiver request is submitted for approval or continuation.

(2) Any failure to comply with the provisions of Chapter 577, Laws of 1992, shall subject the carrier/self-insured employer to the sanctions of the Workers' Compensation Law.

HISTORY: Laws, 1992, ch. 577 § 9; Laws, 1993, ch. 552, § 4, eff from and after passage (approved April 13, 1993).

Editor's Notes — Laws of 1992, ch. 577, added §§ 71-3-121 through 71-3-127, and amended several code sections. For a complete list of code sections affected by ch. 577, see Statutory Tables Volume, Table B, allocation of acts, 1992.

§ 71-3-127. Use of arbitrators to resolve disputes.

The Workers' Compensation Commission may utilize one or more arbitrators to resolve disputes under such procedures as prescribed by the commission in its uniform procedure rules.

HISTORY: Laws, 1992, ch. 577, § 10, eff from and after passage (approved May 15, 1992).

§ 71-3-129. Child and spousal support liens placed upon workers' compensation.

(1) The Mississippi Department of Human Services, Division of Child Support Enforcement (the department) or the obligee may cause a lien for unpaid and delinquent child or spousal support to be placed upon any workers' compensation benefits payable to an obligor delinquent in child support or spousal support payments where a minor child is living with such spouse and such maintenance or spousal support is collected in conjunction with child support.

(2) The lien shall be effective upon notice being filed with the Executive Director of the Mississippi Workers' Compensation Commission. The notice shall contain the name and address of the delinquent obligor, the Social Security number of the obligor, if known, the name of the obligee, and the amount of delinquent child or spousal support.

(3) Any person(s), firm(s), corporation(s), including an insurance carrier, making any payment of workers' compensation benefits to such obligor or to his

attorney(s), heir(s) or legal representative(s), after receipt of such notice, if support has been assigned to the department pursuant to Section 43-19-31, Mississippi Code of 1972, shall be liable to the obligee. In such event, the lien may be enforced by the department against any person(s), firm(s), corporation(s) making the workers' compensation benefit payment.

(4) Upon the filing of a notice under this section, the Executive Director of the Mississippi Workers' Compensation Commission shall mail to the obligor and to all attorneys and insurance carriers of record, a copy of the notice. The obligor, attorneys and insurance carriers shall be deemed to have received the notice within five (5) days of the mailing of the notice by the Executive Director of the Mississippi Workers' Compensation Commission. The lien described in this section shall attach to all workers' compensation benefits which are thereafter payable.

(5) In cases in which the department is not a party, the obligee or his attorney shall file notice of the lien with such payor as described in subsection (3) above. This notice shall have attached a certified copy of the court order with all modifications and a sworn statement by the obligee attesting to or certifying the amount of the arrearages.

(6) Notice of the lien shall be filed with the Executive Director of the Mississippi Workers' Compensation Commission either by serving a certified copy of the court order by first class mail; or by transmittal of the information described in subsection (2) via automated means.

(7) Any amount deducted and withheld pursuant to subsection (1) shall be paid by the commission to the department.

(8) Any amount deducted and withheld pursuant to subsection (1) shall for all purposes be treated as if it were paid to the individual as benefits and paid by such individual to the department in satisfaction of the individual's child support obligations.

(9) For purposes of this section, the term "benefits" means any compensation payable under this chapter (including amounts payable by the commission pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to injury or death).

(10) The department and the Mississippi Workers' Compensation Commission may enter into agreements to carry out the provisions of subsection (6) of this section.

(11) The term "child support obligation" shall be as defined in Section 93-11-101, Mississippi Code of 1972.

HISTORY: Laws, 1997, ch. 588, § 144, eff from and after July 1, 1997.

Editor's Notes — Laws of 1997, ch. 588, § 150, provides as follows:
"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

JUDICIAL DECISIONS

ANALYSIS

1. Applicability.
2. Child support lien enforceable.

1. Applicability.

Appellate court erred in reversing a judgment by the Workers' Compensation Commission finding that a deceased employee's biological children were not entitled to his death benefits where the statutory lien only applied to benefits payable to an employee who had delinquent child support, and the employee's parental rights were terminated when the mother's new husband adopted them. Young ex rel. Heirs of Tewksbury v. Air Masters Mech., Inc., 294 So. 3d 1172, 2020 Miss. LEXIS 96 (Miss. 2020).

2. Child support lien enforceable.

Workers' Compensation Commission erred in reversing an administrative judge's order, finding that a deceased employee's minor children were ineligible for benefits because, while the children had been adopted by their stepfather, the lien for child support was valid inasmuch as the mother provided the Commission with proper notice, the lien for child support accrued prior to the adoption, and the adoption did not impact the mother's ability to execute on the lien. Young ex rel. Heirs of Tewksbury v. Air Masters Mech., Inc., — So. 3d —, 2019 Miss. App. LEXIS 152 (Miss. Ct. App. Apr. 16, 2019), rev'd, 294 So. 3d 1172, 2020 Miss. LEXIS 96 (Miss. 2020).

MISSISSIPPI WORKERS' COMPENSATION SELF-INSURER GUARANTY ASSOCIATION LAW

Sec.	
71-3-151.	Title.
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71-3-155.	Workers' compensation self-insurer guaranty association law to be liberally construed.
71-3-157.	Definitions.
71-3-159.	Workers' Compensation Individual Self-insurer Guaranty Association and Workers' Compensation Group Self-insurer Guaranty Association.
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71-3-163.	Powers, duties and obligations of the associations.
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71-3-167.	Duties and powers of the commission.
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71-3-171.	Repealed.
71-3-173.	Examination of association members; powers and duties of the board of directors; detection and prevention of insolvency of members of association.
71-3-174.	Special assessment plans where association assumes obligations of individual or group self-insurer exceeding the assets of such association.
71-3-175.	Association subject to examination; annual financial report.
71-3-177.	Association exempt from fees and taxes.
71-3-179.	Immunity from liability.
71-3-181.	Stay of proceedings involving self-insurer in default.

§ 71-3-151. Title.

Sections 71-3-151 through 71-3-181 shall be known and may be cited as the "Mississippi Workers' Compensation Self-insurer Guaranty Association Law."

HISTORY: Laws, 1988, ch. 554, § 1, eff from and after July 1, 1988.

Editor's Notes — Pursuant to § 71-3-159, the Mississippi Workers' Compensation Self-Insurer Guaranty Association was renamed the Mississippi Workers' Compensation Individual Self-insurer Guaranty Association.

JUDICIAL DECISIONS

1. Applicability.

Facts were undeveloped, precluding the courts from determining whether plaintiff's claims, as alleged in its complaint, could be pursued only under the Mississippi Tort Claims Act, as ordered by the trial court, and plaintiff could not pursue a cause of action as contemplated by Miss. Code Ann. § 71-3-151 et seq, or otherwise. Absent factual development, no court at this stage of the proceedings could accurately discern whether the Mississippi Workers' Compensation Group Self-Insurer Guaranty Association was an instrumentality of the Mississippi Workers' Compensation Commission. Former Bd. of Trs. & Members of Miss. Comp Choice Self-Insurers Fund v. Miss. Workers' Comp. Group Self-Insurer Guar. Ass'n, 157 So. 3d 820, 2014 Miss. LEXIS 571 (Miss. 2014).

RESEARCH REFERENCES

Am. Jur.

82 Am. Jur. 2d, Workers' Compensation § 608.

Practice References.

Larson's Workers' Compensation Law (Matthew Bender).

§ 71-3-153. Purpose and application.

The purpose of Sections 71-3-151 through 71-3-181 is to provide a mechanism for the payment of the covered claims under the Workers' Compensation Law, to avoid excessive delay in payment and to avoid financial loss to claimants because of the insolvency of a self-insurer, to assist in the detection and prevention of self-insurer insolvencies, and to provide associations to assess the cost of such protection among self-insurers.

Sections 71-3-151 through 71-3-181 shall apply to all employers who are self-insurers under the provisions of Section 71-3-75, Mississippi Code of 1972.

HISTORY: Laws, 1988, ch. 554, § 2; Laws, 2004, ch. 555, § 1, eff from and after July 1, 2004.

JUDICIAL DECISIONS

1. Assessment.

Workers' Compensation Group Self-Insurer Guaranty Association (GGA) had the authority to assess the Mississippi Manufacturers Association Workers' Compensation Group because the assessment was levied within three years of its withdrawal from the GGA; therefore, the assessment was consistent with the GGA's plan of operation and was a valid exercise of the Workers' Compensation Commission's regulatory authority under the Workers' Compensation Self-insurer Guaranty Association Law. Miss. Mfrs.

Ass'n Workers' Comp. Grp. v. Miss. Workers' Comp. Group Self-Insurer Guar. Ass'n, 281 So. 3d 108, 2019 Miss. App. LEXIS 45 (Miss. Ct. App. 2019).

§ 71-3-155. Workers' compensation self-insurer guaranty association law to be liberally construed.

Sections 71-3-151 through 71-3-181 shall be liberally construed to effect the purpose under Section 71-3-153, which shall constitute an aid and guide to interpretation.

HISTORY: Laws, 1988, ch. 554, § 3, eff from and after July 1, 1988.

§ 71-3-157. Definitions.

For the purposes of Sections 71-3-151 through 71-3-181, the following words shall have the meanings ascribed herein unless the context shall otherwise require:

(a) "Individual association" means the Mississippi Workers' Compensation Individual Self-insurer Guaranty Association created under Section 71-3-159.

(b) "Group association" means the Mississippi Workers' Compensation Group Self-insurer Guaranty Association created under Section 71-3-159.

(c) "Commission" means the Mississippi Workers' Compensation Commission.

(d) "Compensation" means amounts payable to claimants under the Mississippi Workers' Compensation Law as defined in Section 71-3-3(j), Mississippi Code of 1972.

(e) "Covered claim" means an unpaid claim upon which compensation or medical is payable by an individual self-insurer or a group self-insurer under the Workers' Compensation Law.

(f) "Self-insurer in default" means an individual self-insurer or a group self-insurer as defined by this chapter that has defaulted or failed for any reason to satisfy any of its obligations under the Workers' Compensation Law, including, without limitation, all obligations for payment of indemnity compensation, disability, expenses of medical, hospital, surgical, rehabilitation and other services, death benefits and funeral expenses, whether such default or failure is the result of insolvency or bankruptcy or receivership or otherwise.

(g) "Member self-insurer" means a self-insurer as defined by this chapter who is a member of the Mississippi Workers' Compensation Individual Self-insurer Guaranty Association or the Mississippi Workers' Compensation Group Self-insurer Guaranty Association.

(h) "Individual self-insurer" is an employer who has been authorized under Section 71-3-75(2), Mississippi Code of 1972, to insure under the Workers' Compensation Law.

(i) "Group self-insurer" is a group of employers who have been authorized under Section 71-3-75(3), Mississippi Code of 1972, to insure under the Workers' Compensation Law.

(j) "Person" means any individual, corporation, partnership, association or voluntary organization.

HISTORY: Laws, 1988, ch. 554, § 4; Laws, 2003, ch. 553, § 1; Laws, 2004, ch. 555, § 2, eff from and after July 1, 2004.

§ 71-3-159. Workers' Compensation Individual Self-insurer Guaranty Association and Workers' Compensation Group Self-insurer Guaranty Association.

The Mississippi Workers' Compensation Self-insurer Guaranty Association created under this chapter shall be renamed as the "Mississippi Workers' Compensation Individual Self-insurer Guaranty Association" and there is created a separate nonprofit unincorporated legal entity to be known as the "Mississippi Workers' Compensation Group Self-insurer Guaranty Association." All individual self-insurers shall be and remain members of the individual association and all group self-insurers shall be and remain members of the group association as a condition of their authority under Section 71-3-75, Mississippi Code of 1972. These associations shall perform their functions under plan s of operation established and approved under Section 71-3-165 and shall exercise their powers through boards of directors established under Section 71-3-161. However, any individual or group self-insurer composed of the state, or any agency thereof, or county or municipal governments shall not be required to be members of the individual association or the group association.

HISTORY: Laws, 1988, ch. 554, § 5; Laws, 2004, ch. 555, § 3, eff from and after July 1, 2004.

Cross References — Application of this section to the definition of "association," see § 71-3-157.

JUDICIAL DECISIONS

1. Assessment.

Workers' Compensation Group Self-Insurer Guaranty Association (GGA) had the authority to assess the Mississippi Manufacturers Association Workers' Compensation Group because the assessment was levied within three years of its withdrawal from the GGA; therefore, the assessment was consistent with the GGA's plan of operation and was a valid exercise of the Workers' Compensation Commission's regulatory authority under the Workers' Compensation Self-insurer Guaranty Association Law. Miss. Mfrs. Ass'n Workers' Comp. Grp. v. Miss. Workers' Comp. Group Self-Insurer Guar. Ass'n, 281 So. 3d 108, 2019 Miss. App. LEXIS 45 (Miss. Ct. App. 2019).

§ 71-3-161. Board of directors of associations.

(1) The boards of directors of the individual association and the group association shall each consist of not less than five (5) nor more than nine (9) persons, serving terms as established in their plans of operation. The members of each of the boards shall be selected by their respective member self-insurers,

subject to the approval of the commission. Vacancies of the boards shall be filled for the remaining period of the term in the same manner as initial appointments.

(2) In approving selections to the boards, the commission shall consider, among other things, whether all member self-insurers of their respective association are fairly represented.

(3) Subject to board approval, members of the boards may be reimbursed from the assets of their respective associations for expenses, including, but not limited to, attorney fees, incurred by them as members of the boards of directors.

HISTORY: Laws, 1988, ch. 554, § 6; Laws, 2004, ch. 555, § 4, eff from and after July 1, 2004.

Cross References — Direction that the workers' compensation self-insurer guaranty association exercise its powers through a board of directors established under this section, see § 71-3-159.

Direction that the association's plan of operation establish the amount and method of reimbursing members of the board of directors, see § 71-3-165.

§ 71-3-163. Powers, duties and obligations of the associations.

(1) Each association shall:

(a) Be obligated to the extent of its covered claims existing prior to the date of default and arising within thirty (30) days after the date of default. In no event shall an association be obligated to a claimant in an amount in excess of the obligation of the defaulting member self-insurer of such association.

(b) Be deemed the self-insurer to the extent of obligations on its covered claims and to such extent shall have all rights, duties and obligations of the individual self-insurer in default or insolvent group self-insurer in default as if such self-insurer were not in default.

(c) Assess its respective individual self-insurers or group self-insurers amounts necessary to pay the obligations of the association under subsection (2) of this section, the expenses of handling covered claims and other expenses authorized by Sections 71-3-151 through 71-3-181. The assessments of each individual self-insurer and each group self-insurer shall be two percent (2%) of the gross paid compensation and medical supplies and services of said member self-insurer during each period of six (6) months. Said two percent (2%) assessment shall be collected by the commission at the same time as and pursuant to the procedures adopted by the commission pursuant to Section 71-3-99, Mississippi Code of 1972. If the obligations of the individual association incurred on or after July 1, 2004, for covered claims arising before July 1, 2004, plus necessary expenses of the individual association incurred on or after July 1, 2004, in evaluating, adjusting, defending or settling such covered claims, exceed the total amount of funds held by the individual association on July 1, 2004, then and to that extent all individual employers and groups of employers who were self-insurers on the dates that the covered claims arose shall be liable for a special assessment in the amount of such deficiency. This special assessment shall be collected by the commission in accordance with the procedures adopted by the commission under Section 71-3-99. All obligations for covered claims arising on or after July 1, 2004, shall be the sole obligation of the association to which the self-insurer in default belongs. The two percent (2%) assessment on each individual self-insurer and on each group self-insurer shall be collected by the commission until the sum of Two Million Dollars ($2,000,000.00) is accumulated by the individual association and the sum of One Million Dollars ($1,000,000.00) is accumulated by the group association. At that time the assessments shall be suspended. However, any employer that becomes authorized under Section 71-3-75 to be a member self-insurer after July 1, 1996, is not entitled to have the two percent (2%) assessment suspended until such member self-insurer has contributed to the guaranty fund to which it belongs for the first four (4) years such employer is a member self-insurer regardless of the amount in the guaranty fund of the association to which it belongs. The two percent (2%) assessment shall be reinstituted for all member self-insurers of the individual association at any time that the guaranty fund balance of the individual association reaches One Million Five Hundred Thousand Dollars ($1,500,000.00) and such assessment shall continue until such time as the balance is Two Million Dollars ($2,000,000.00). The two percent (2%) assessment shall be reinstituted for all member self-insurers of the group association at any time that the guaranty fund balance of the group association reaches Seven Hundred Fifty Thousand Dollars ($750,000.00) and such assessment shall continue until such time as the balance is One Million Dollars ($1,000,000.00). If the maximum assessment, together with the other assets of an association, does not provide in any one (1) year an amount sufficient to make all necessary payments, the funds available in such association shall be paid as directed by the commission and any unpaid portion shall be paid as soon thereafter as funds in such association become available. When the guaranty fund balance of the group association reaches One Million Dollars ($1,000,000.00), the commission may waive the need for bonding requirements for self-funded pools.

(d) Investigate claims brought against the association; adjust, compromise, settle and pay covered claims to the extent of the association's obligations; deny all other claims; and may review settlements, releases and judgments to which the member self-insurer in default were parties to determine the extent to which such settlements, releases and judgments may be properly contested.

(e) Notify such persons as the commission directs under Section 71-3-167(2)(a).

(f) Handle claims through its employees or through one or more other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commission.

(g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association, and shall pay the other expenses of the association authorized by Sections 71-3-151 through 71-3-181.

(2) Each association may:

(a) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(b) Sue or be sued.

(c) Negotiate and become a party to such contracts as are necessary to carry out the purposes of Sections 71-3-151 through 71-3-181.

(d) Perform such other acts as are necessary or proper to effectuate the purposes of Sections 71-3-151 through 71-3-181.

HISTORY: Laws, 1988, ch. 554, § 7; Laws, 1990, ch. 540, § 1; Laws, 1996, ch. 360, § 1; Laws, 2003, ch. 553, § 2; Laws, 2004, ch. 555, § 5, eff from and after July 1, 2004.

Cross References — Authority for the association to delegate all of its powers and duties except those under this section to a corporation or other organization to perform similar functions, see § 71-3-165.

Direction that the association's plan of operation establish procedures whereby all the powers and duties of the association under this section will be performed, see § 71-3-165.

JUDICIAL DECISIONS

1. Assessment.

Workers' Compensation Group Self-Insurer Guaranty Association (GGA) had the authority to assess the Mississippi Manufacturers Association Workers' Compensation Group because the assessment was levied within three years of its withdrawal from the GGA; therefore, the assessment was consistent with the GGA's plan of operation and was a valid exercise of the Workers' Compensation Commission's regulatory authority under the Workers' Compensation Self-insurer Guaranty Association Law. Miss. Mfrs. Ass'n Workers' Comp. Grp. v. Miss. Workers' Comp. Group Self-Insurer Guar. Ass'n, 281 So. 3d 108, 2019 Miss. App. LEXIS 45 (Miss. Ct. App. 2019).

Plain language of the statute prohibited the assessment imposed upon the Mississippi Manufacturers Association Workers' Compensation Group because there was nothing to show that the Workers' Compensation Group Self-Insurer Guaranty Association's (GGA) fund balance ever declined to $ 750,000; because the statute prohibited the assessment, the GGA's plan of operation could not provide authority for the assessment. Miss. Mfrs. Ass'n Workers' Comp. Grp. v. Miss. Workers' Comp. Group Self-Insurer Guar. Ass'n, 281 So. 3d 108, 2019 Miss. App. LEXIS 45 (Miss. Ct. App. 2019).

Once assessments "shall be suspended" by operation of the statute, the assessments may be reinstituted only in accordance with the statute; that is, under the statute, the Workers' Compensation Group Self-Insurer Guaranty Association lacks authority to reinstitute assessments unless the fund balance actually declines to $750,000. Miss. Mfrs. Ass'n Workers' Comp. Grp. v. Miss. Workers' Comp. Group Self-Insurer Guar. Ass'n, 281 So. 3d 108, 2019 Miss. App. LEXIS 45 (Miss. Ct. App. 2019).

Mississippi Workers' Compensation Commission has authority to regulate self-insurers and their guaranty associations and to administer the provisions of the statute; however, the Commission cannot exercise its authority in a manner contrary to the terms of an applicable statute; although the Commission approved the Workers' Compensation Group Self-Insurer Guaranty Association's plan of operation, that provision is invalid to the extent that it is contrary to the plain language of the statute. Miss. Mfrs. Ass'n Workers' Comp. Grp. v. Miss. Workers' Comp. Group Self-Insurer Guar. Ass'n, 281 So. 3d 108, 2019 Miss. App. LEXIS 45 (Miss. Ct. App. 2019).

§ 71-3-165. Plan of operation of associations.

(1) Each association shall submit to the commission a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commission.

(2) If at any time an association fails to submit suitable amendments to its plan, the commission shall, after notice and hearings, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of Sections 71-3-151 through 71-3-181. Such rules shall continue in force until modified by the commission or superseded by a plan submitted by the noncomplying association and approved by the commission.

(3) All member self-insurers shall comply with the plan of operation of the association to which they belong. The plan of operation of each association shall:

(a) Establish the procedures whereby all the powers and duties of the association under Section 71-3-163 will be performed.

(b) Establish procedures for handling assets of the association.

(c) Establish the amount and method of reimbursing members of the board of directors under Section 71-3-161.

(d) Establish procedures by which claims may be filed with the association, and establish acceptable forms of proof of covered claims.

(e) Establish regular places and times for meetings of the board of directors.

(f) Establish procedures for records to be kept of all financial transactions of the association, its agents and the board of directors.

(g) Provide that any individual self-insurer or group self-insurer aggrieved by any final action or decision of the association to which it belongs may appeal to the commission within thirty (30) days after the action or decision.

(h) Establish the procedures whereby selections for the board of directors will be submitted to the commission.

(i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation of each association may provide that any or all powers and duties of the association, except those under Section 71-3-163(1)(c) and Section 71-3-174, are delegated to a corporation, association or other organization which performs or will perform functions similar to those of the association. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed, and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of

directors of the association and the commission, and may be made only to a corporation, association or organization which extends protection not substantially less favorable and effective than that provided by Sections 71-3-151 through 71-3-181.

HISTORY: Laws, 1988, ch. 554, § 8; Laws, 2003, ch. 553, § 3; Laws, 2004, ch. 555, § 6, eff from and after July 1, 2004.

Cross References — Direction that the workers' compensation self-insurer guaranty association perform its functions under a plan of operation established and approved under this section, see § 71-3-159.

JUDICIAL DECISIONS

1. Assessment.

Workers' Compensation Group Self-Insurer Guaranty Association (GGA) had the authority to assess the Mississippi Manufacturers Association Workers' Compensation Group because the assessment was levied within three years of its withdrawal from the GGA; therefore, the assessment was consistent with the GGA's plan of operation and was a valid exercise of the Workers' Compensation Commission's regulatory authority under the Workers' Compensation Self-insurer Guaranty Association Law. Miss. Mfrs. Ass'n Workers' Comp. Grp. v. Miss. Workers' Comp. Group Self-Insurer Guar. Ass'n, 281 So. 3d 108, 2019 Miss. App. LEXIS 45 (Miss. Ct. App. 2019).

§ 71-3-167. Duties and powers of the commission.

(1) The commission shall:

(a) Upon the request of an association or of any other party or without any request on its own motion, enter any appropriate order finding a member self-insurer to be in default and to determine the date of such default and promptly notify the association to which such member self-insurer belongs of the existence of such default and the date of such default.

(b) Upon request of the board of directors of an association, provide such association with a statement of compensation payments of each member self-insurer of such association.

(2) The commission may:

(a) Require that the group association notify the member self-insurers of any group self-insurer in default and any other interested parties of the default. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

(b) Suspend or revoke, after notice and hearing, the authority to self-insure granted under Section 71-3-75, Mississippi Code of 1972, of any member self-insurer who fails to pay an assessment when due, or fails to comply with the plan of operation of the association to which it belongs. As an alternative, the commission may levy a fine on any member self-insurer who fails to pay an assessment when due or fails to comply with the plan of operation. Such fine shall not exceed five percent (5%) of the unpaid assessment per month, except that no fine shall be less than One Hundred Dollars ($100.00) per month.

(c) Revoke the designation of any servicing facility if it finds claims are being handled unsatisfactorily.

(3) Any final action or order of the commission under Sections 71-3-151 through 71-3-181 shall be subject to judicial review in a court of competent jurisdiction.

HISTORY: Laws, 1988, ch. 554, § 9; Laws, 2003, ch. 553, § 4; Laws, 2004, ch. 555, § 7, eff from and after July 1, 2004.

Cross References — Duty of the association to give notice as directed by the commission under this section, see § 71-3-163.

RESEARCH REFERENCES

Am. Jur.
82 Am. Jur. 2d, Workers' Compensation §§ 608.

§ 71-3-169. Assignment of rights under workers' compensation law to association; claims by association against insolvent self-insurer.

(1) Any person recovering from an association under Sections 71-3-151 through 71-3-181 shall be deemed to have assigned his rights under the Workers' Compensation Law to such association to the extent of his recovery from such association. Any claimant seeking the protection of Sections 71-3-151 through 71-3-181 shall cooperate with the association against which claim is made to the same extent as such person would have been required to cooperate with the member self-insurer in default. Such association shall have no cause of action under the Workers' Compensation Law against the claimant of the member self-insurer in default for any sums it has paid out except such causes of action as such member self-insurer in default would have had if such sums had been paid by such member self-insurer in default.

(2) An association may recover from the self-insurer in default and from a group self-insurer in default all amounts paid by such association on account of covered claims of employees of the member self-insurer in default and any group self-insurer in default to which such member self-insurer in default belongs, as well as all expenses incurred by such association in evaluating, adjusting, defending or settling covered claims of such employees. It shall be presumed that all amounts paid by such association under this section are reasonable, necessary and otherwise in compliance with this chapter. There shall be added to any recovery under this section expenses of litigation of such association in obtaining such recovery, interest at the rate of eight percent (8%) per annum commencing on the date of such default and a ten percent (10%) penalty.

HISTORY: Laws, 1988, ch. 554, § 10; Laws, 2003, ch. 553, § 5; Laws, 2004, ch. 555, § 8, eff from and after July 1, 2004.

§ 71-3-171. Repealed.

Repealed by Laws, 2003, ch. 553, § 9, eff from and after July 1, 2003.
§ 71-3-171. [Laws, 1988, ch. 554, § 11, eff from and after July 1, 1988.]

Editor's Notes — Former § 71-3-171 provided for recovery under another insurance guaranty association.

§ 71-3-173. Examination of association members; powers and duties of the board of directors; detection and prevention of insolvency of members of association.

To aid in the detection and prevention of individual self-insurer insolvencies and group self-insurer insolvencies:

(a) The board of directors of an association may, upon majority vote, request that the commission order an examination of any of its member self-insurers and group self-insurers which the board in good faith believes may be in a financial condition hazardous to the potential claimants or the public. Upon making any such request to the commission, such board of directors shall recommend for commission approval persons to perform the examination. The examination shall commence within thirty (30) days following the commission's approval of such request for examination. The commission may request a board of directors to recommend for commission approval, and a board of directors can request the commission to approve, alternative persons to complete an examination if it is believed the examination is not being performed in a timely and efficient manner. The cost of such examination shall be paid by the association requesting such examination, and examination reports shall be forwarded to the commission and treated as are other examination reports. In no event shall reports of such examination be released to the board of directors of such association prior to release to the public, but this shall not preclude the commission from complying with paragraph (b) of this section. The commission shall notify the board of directors of such association when the examination is completed. Each request for an examination by an association shall be kept on file by the commission, but it shall not be open to public inspection prior to the release of an examination report to the public.

(b) It shall be the duty of the commission to report to the board of directors of an association when it has reasonable cause to believe that any member self-insurer or group self-insurer examined or being examined at the request of the board of directors of such association may be insolvent or in a financial condition hazardous to potential claimants or the public.

(c) The board of directors of an association may, upon majority vote, make reports and recommendations to the commission upon any matter germane to the solvency, bankruptcy or reorganization of any of its member self-insurer s and group self-insurers. Such reports and recommendations shall not be considered public documents.

(d) The board of directors of an association may, upon majority vote, make recommendations to the commission for the detection and prevention of member self-insurer insolvencies and group self-insurer insolvencies.

(e) The board of directors of an association shall, at the conclusion of any insolvency, bankruptcy case or default where such association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency and bankruptcy, based on the information available to such association, and submit such report to the commission.

HISTORY: Laws, 1988, ch. 554, § 12; Laws, 2003, ch. 553, § 6; Laws, 2004, ch. 555, § 9, eff from and after July 1, 2004.

§ 71-3-174. Special assessment plans where association assumes obligations of individual or group self-insurer exceeding the assets of such association.

If an association assumes any obligations of an individual self-insurer or group self-insurer under this chapter, and payments of such obligations exceed the assets of such association, such association shall within not less than sixty (60) days thereafter submit for approval by the commission a plan for special assessment of each individual self-insurer and group self-insurer who may be responsible for payment of such obligations in excess of the assets of such association. Such plan for special assessment shall also include the expenses of such association related to the processing of obligations covered by the special assessment plan. Failure to comply with a commission-approved special assessment plan of an association shall create a cause of action in favor of such association against any noncompliant member self-insurer and any noncompliant group self-insurer for recovery of payments and expenses by such association for which the noncompliant member self-insurer or noncompliant group self-insurer should have been obligated. It shall be presumed that all obligations paid by an association pursuant to a commission-approved special assessment plan, including, but not limited to, expenses associated with processing such obligations, are reasonable, necessary and otherwise in compliance with the requirements of this chapter. There shall be added to any recovery under this section expenses of litigation of such association related to such cause of action, interest at the rate of eight percent (8%) per annum beginning on the date of such noncompliance and a ten percent (10%) penalty.

HISTORY: Laws, 2004, ch. 555, § 10, eff from and after July 1, 2004.

§ 71-3-175. Association subject to examination; annual financial report.

The individual association and group association shall be subject to examination and regulation by the commission. The board of directors of each association shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commission. The commission shall furnish the board of directors of an association any records of the commission which would aid in the preparation of this financial report.

HISTORY: Laws, 1988, ch. 554, § 13; Laws, 2004, ch. 555, § 11, eff from and after July 1, 2004.

§ 71-3-177. Association exempt from fees and taxes.

The individual association and group association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

HISTORY: Laws, 1988, ch. 554, § 14; Laws, 2004, ch. 555, § 12, eff from and after July 1, 2004.

§ 71-3-179. Immunity from liability.

Subject to Section 71-3-174, there shall be no liability on the part of and no cause of action of any nature shall arise against any individual self-insurer, any group self-insurer, association, agents and employees of an association, board of directors of an association, and the commission and its employees and representatives, or any of them, for any good faith, affirmative action taken by any of them in the performance of their powers and duties under Sections 71-3-151 through 71-3-181. This section does not apply to individual employers who are members of a group self-insurer. Such immunity shall not extend to any acts of gross negligence by any such individual self-insurer, group self-insurer, association, agents and employees of an association, board of directors of an association and the commission and its employees and representative committed in the performance of their duties hereunder.

HISTORY: Laws, 1988, ch. 554, § 15; Laws, 2003, ch. 553, § 7; Laws, 2004, ch. 555, § 13, eff from and after July 1, 2004.

JUDICIAL DECISIONS

1. In general.

Language of the immunity granted by the Mississippi Workers' Compensation Self-Insurer Guaranty Association Law is different and significantly more restrictive than the immunities granted by the Mississippi Tort Claims Act. Former Bd. of Trs. & Members of Miss. Comp Choice Self-Insurers Fund v. Miss. Workers' Comp. Group Self-Insurer Guar. Ass'n, 157 So. 3d 820, 2014 Miss. LEXIS 571 (Miss. 2014).

§ 71-3-181. Stay of proceedings involving self-insurer in default.

All proceedings in which any individual self-insurer in default or group self-insurer in default is a party before the commission or in any court in this state, on order of the commission, may be stayed for a period not to exceed six (6) months from the date of the default to permit proper defense by such association of all covered claims. If any judgment, order, decision, verdict or finding is made or entered against such individual self-insurer in default or group self-insurer in default while the stay provided in this section is effective, the association to which such individual self-insurer or group self-insurer belongs may apply to have such judgment, order, decision, verdict or finding set aside by the same court or administrator that made such judgment, order, decision, verdict or finding. Such association shall be permitted to enter its appearance and defend against any covered claim which is pending on the date of default or which is filed thereafter.

HISTORY: Laws, 1988, ch. 554, § 16; Laws, 2003, ch. 553, § 8; Laws, 2004, ch. 555, § 14, eff from and after July 1, 2004.

DRUG-FREE WORKPLACE WORKERS' COMPENSATION PREMIUM REDUCTION ACT

Sec.	
71-3-201.	Title.
71-3-203.	Legislative Intent.
71-3-205.	Definitions.
71-3-207.	Implementation of drug-free workplace program; qualification of employer of premium reduction.
71-3-209.	Elements of drug-free workplace program.
71-3-211.	Employer's written policy statement on substance abuse.
71-3-213.	Qualification as private sector drug-free workplace.
71-3-215.	Education program on alcohol and drug abuse.
71-3-217.	Training of supervisory personnel.
71-3-219.	Confidentiality of results of substance abuse program.
71-3-221.	Failure of employer to establish substance abuse program.
71-3-223.	Relation to other laws.
71-3-225.	Severability.

§ 71-3-201. Title.

Sections 71-3-201 through 71-3-225 shall be known and may be cited as the "Drug-Free Workplace Workers' Compensation Premium Reduction Act."

HISTORY: Laws, 1997, ch. 455, § 1, eff from and after July 1, 1997.

Federal Aspects— Drug-Free Workplace Act of 1988, see 41 USCS §§ 8101 et seq.

RESEARCH REFERENCES

ALR.
Liability for discharge of at-will employee for refusal to submit to drug testing. 79 A.L.R.4th 109.

Am. Jur.
82 Am. Jur. 2d, Wrongful Discharge § 29.

§ 71-3-203. Legislative Intent.

It is the intent of the Legislature to promote drug-free workplaces in order that employers in this state be afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace, and reach their desired levels of success without experiencing the costs, delays and tragedies associated with work-related accidents resulting from substance abuse by employees.

HISTORY: Laws, 1997, ch. 455, § 2, eff from and after July 1, 1997.

§ 71-3-205. Definitions.

The following words and terms in Sections 71-3-201 through 71-3-225 shall have meanings as follows:

(a) "Employee" means any person who works for salary, wages or other remuneration for an employer.

(b) "Employer" means a person or entity that is subject to the Mississippi Workers' Compensation Law as found in Section 71-3-1 et seq., Mississippi Code of 1972.

HISTORY: Laws, 1997, ch. 455, § 3, eff from and after July 1, 1997.

§ 71-3-207. Implementation of drug-free workplace program; qualification of employer of premium reduction.

(1) If an employer implements a drug-free workplace program substantially in accordance with Sections 71-3-201 through 71-3-225, the employer shall qualify for certification for a five percent (5%) premium discount if offered under the employer's workers' compensation insurance policy.

(2) For each policy of workers' compensation insurance issued or renewed in the state on or after July 1, 1997, a five percent (5%) reduction in the premium for such policy may be granted by the insurer if the insured certifies to the insurer that it has established and maintains a drug-free workplace program that complies with the requirements of Sections 71-3-201 through 71-3-225.

(3) The premium discount provided by this section shall be applied to an insured's workers' compensation insurance pro rata as of the date of receipt of certification by the insurer.

(4) The Workers' Compensation Commission shall promulgate appropriate forms and procedures to allow self-certification by an insured to its insurer. Certification by an insured shall be required for each year in which a premium discount is granted.

(5) The insured's workers' compensation insurance policy shall be subject to an additional premium for the purposes of reimbursement of a previously granted premium discount if it is determined that such insured misrepresented the compliance of its drug-free workplace program within the provisions of Sections 71-3-201 through 71-3-225.

(6) The Workers' Compensation Commission shall be authorized to promulgate rules and regulations necessary for the implementation and enforcement of this section.

HISTORY: Laws, 1997, ch. 455, § 4, eff from and after July 1, 1997.

Cross References — Workers Compensation Commission, see § 71-3-85.

§ 71-3-209. Elements of drug-free workplace program.

A drug-free workplace program must contain the following elements:

(a) Written policy statement as provided in Section 71-3-211;

(b) Comply with the substance abuse testing procedures as provided in Sections 71-7-1 through 71-7-33, Mississippi Code of 1972, if testing is initiated by the employer;

(c) Resources of employee assistance providers or other rehabilitation resources, maintained in accordance with Section 71-3-213;

(d) Employee education as provided in Section 71-3-215; and

(e) Supervisor training in accordance with Section 71-3-217.

HISTORY: Laws, 1997, ch. 455, § 5, eff from and after July 1, 1997.

RESEARCH REFERENCES

ALR.

Liability for discharge of at-will employee for refusal to submit to drug testing. 79 A.L.R.4th 109.

Am. Jur.

82 Am. Jur. 2d, Wrongful Discharge § 29.

§ 71-3-211. Employer's written policy statement on substance abuse.

A drug-free workplace must provide a written policy statement on substance abuse in order to qualify for the provisions of Section 71-3-207. All employees must be given a written policy statement from the employer that contains:

(a) A general statement of the employer's policy on substance abuse notifying employees that the unlawful manufacture, sale, distribution, solicitation, possession with intent to sell or distribute, or use of alcohol or other drugs is prohibited in the person's workplace;

(b) A statement advising an employee or job applicant of the existence of Sections 71-3-201 through 71-3-225;

(c) A general statement concerning confidentiality;

(d) A statement advising an employee of the employee assistance program, external employee assistance program, or the employer's resource file of employee assistance programs and other persons, entities or organizations designed to assist employees with personal or behavioral problems;

(e) A statement informing an employee of the provisions of the federal Drug-Free Workplace Act if applicable to the employer.

HISTORY: Laws, 1997, ch. 455, § 6, eff from and after July 1, 1997.

Federal Aspects— Drug-Free Workplace Act of 1988, see 41 USCS §§ 8101 et seq.

§ 71-3-213. Qualification as private sector drug-free workplace.

In order for an employer's workplace to qualify as a private sector drug-free workplace and to qualify for the provisions of Section 71-3-207, the following must be met:

(a) If an employer has an employee assistance program, the employer must inform the employee of the benefits and services of the employee assistance program. An employer shall post notice of the employee assistance program in conspicuous places and explore alternatives to publicize such services. In addition, the employer must provide the employee with notice of the policies and procedures regarding access to and utilization of the program.

(b) If an employer does not have an employee assistance program, the employer must maintain a resource file of employee assistance service providers, alcohol and other drug abuse programs, mental health providers, and other persons, entities or organizations available to assist employees with personal or behavioral problems. The employer shall provide all employees information about the existence of the resource file and a summary of the information contained within the resource file. The summary should contain, but need not be limited to, all information necessary to access the services listed in the resource file. In addition, the employer shall post in conspicuous places a listing of multiple employee assistance providers in the area.

HISTORY: Laws, 1997, ch. 455, § 7, eff from and after July 1, 1997.

§ 71-3-215. Education program on alcohol and drug abuse.

An employer must provide all employees with an education program on alcohol and other drug abuse prior to instituting a private sector drug-free workplace program under Sections 71-3-201 through 71-3-225. Also, an employer must provide all employees with an annual education program on alcohol and other drug abuse, in general, and its effects on the workplace, specifically. An education program for a minimum of one (1) hour should include, but is not limited to, the following information:

(a) The explanation of the disease of addiction for alcohol and other drugs;

(b) The effects and dangers of the commonly abused substances in the workplace; and

(c) The company's policies and procedures regarding alcohol and other drug use or abuse in the workplace and how employees who wish to obtain substance abuse treatment can do so.

HISTORY: Laws, 1997, ch. 455, § 8, eff from and after July 1, 1997.

Cross References — Employer's written policy on substance abuse, see § 71-3-211.

§ 71-3-217. Training of supervisory personnel.

In order to qualify as a private sector drug-free workplace and to qualify for the provisions of Section 71-3-207, and in addition to the educational program provided in Section 71-3-215, an employer must provide all supervisory personnel a minimum of two (2) hours of training prior to the institution of a drug-free workplace program under Sections 71-3-201 through 71-3-225, and each year thereafter which should include, but is not limited to, the following:

(a) Recognition of evidence of employee alcohol and other drug abuse;

(b) Documentation and corroboration of employee alcohol and other drug abuse;

(c) Referral of alcohol and other drug abusing employees to the proper treatment providers;

(d) Recognition of the benefits of referring alcohol and other drug abusing employees to treatment programs, in terms of employee health and safety and company savings; and

(e) Explanation of any employee health insurance of HMO coverage for alcohol and other drug problems.

HISTORY: Laws, 1997, ch. 455, § 9, eff from and after July 1, 1997.

§ 71-3-219. Confidentiality of results of substance abuse program.

(1) All information, interview, reports, statements, memoranda and test results, written or otherwise, received by the employer through a substance abuse program are confidential communications as they pertain to the employee only and may not be used or received in evidence, obtained in discovery or disclosed in any public or private proceedings, except as provided in Sections 71-7-1 through 71-7-33, Mississippi Code of 1972.

(2) Release of any such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the person tested, unless such release is compelled by an agency of the state or a court of competent jurisdiction or unless deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain at a minimum:

(a) The name of the person who is authorized to obtain the information;

(b) The purpose of the disclosure;

(c) The precise information to be disclosed;

(d) The duration of the consent; and

(e) The signature of the person authorizing release of the information.

(3) Nothing in Sections 71-3-201 through 71-3-225 shall be construed to call for actions that may violate federal or state confidentiality statutes for employee assistance professionals and alcohol and other drug abuse counseling or treatment providers.

HISTORY: Laws, 1997, ch. 455, § 10, eff from and after July 1, 1997.

§ 71-3-221. Failure of employer to establish substance abuse program.

No cause of action shall arise in favor of any person against an employer based upon the failure of an employer to establish a substance abuse program in accordance with Sections 71-3-201 through 71-3-225.

HISTORY: Laws, 1997, ch. 455, § 11, eff from and after July 1, 1997.

§ 71-3-223. Relation to other laws.

Nothing in Sections 71-3-201 through 71-3-225 shall be construed to operate retroactively, and nothing in Sections 71-3-201 through 71-3-225 shall abrogate the right of an employer under state law to conduct substance abuse tests, or implement employee substance abuse testing programs. Only those programs that meet the criteria outlined in Sections 71-3-201 through 71-3-225 qualify for reduced workers' compensation insurance rates under Section 71-3-207.

HISTORY: Laws, 1997, ch. 455, § 12, eff from and after July 1, 1997.

§ 71-3-225. Severability.

If any provision of Sections 71-3-201 through 71-3-225 or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of Sections 71-3-201 through 71-3-225 that can be given effect without the invalid provision or application, and to this end the provisions of Sections 71-3-201 through 71-3-225 are severable.

HISTORY: Laws, 1997, ch. 455, § 13, eff from and after July 1, 1997.

CHAPTER 5.

UNEMPLOYMENT COMPENSATION

Article 1.	General Provisions.	71-5-1
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ARTICLE 1.

GENERAL PROVISIONS.

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71-5-1. Citation and purpose.
71-5-3. Public policy.
71-5-5. Suspension under federal conditions [Repealed effective July 1, 2023].
71-5-7. Suspension under state conditions.
71-5-9. Refunds upon termination.
71-5-11. Definitions [Repealed effective July 1, 2023].
71-5-13. Reciprocal arrangements.
71-5-15. Non-liability of state.
71-5-17. Representation in court.
71-5-19. Penalties; when overpayment of benefits occurs; reciprocity with other states in collection of overpayment [Repealed effective July 1, 2023].
71-5-21. Saving clause.

§ 71-5-1. Citation and purpose.

This chapter shall be known and may be cited as the "Mississippi Employment Security Law." The purpose of the law is to promote employment security by increasing opportunities for placement through the maintenance of a system of public employment offices and to provide through the accumulation of reserves for the payment of compensation to individuals with respect to their unemployment.

HISTORY: Codes, 1942, § 7368; Laws, 1936, ch. 176; Laws, 1948, ch. 412, § 1, eff July 1, 1948, unless context expressly provides otherwise.

Cross References — Free public employment offices, see § 71-5-201.
Payment of unemployment compensation benefits, see §§ 71-5-501 et seq.
Federal Aspects— Federal Unemployment Tax Act, 26 USCS §§ 3301 et seq.

JUDICIAL DECISIONS

1. In general.

Economic insecurity due to involuntary unemployment is the menace and evil that the legislature attempted to overcome and conquer when it enacted the Mississippi Employment Sec. Com. v. B. C. Rogers & Sons, Inc., 193 So. 2d 564, 1967 Miss. LEXIS 1549 (Miss. 1967).

The legislative intent of the test for the employer-employee relationship under the Employment Security Law is obtained by an application of the principles of the common law of master and servant. Mississippi Employment Sec. Com. v. Heidelberg Hotel Co., 211 Miss. 104, 51 So. 2d 47, 1951 Miss. LEXIS 337 (Miss. 1951).

RESEARCH REFERENCES

ALR.

Constitutionality, construction, and application of provision of Unemployment Compensation Act subjecting to its provisions an employer purchasing or succeeding to the business of another employer. 4 A.L.R.2d 721.

Taxicab driver as employee of owner of cab, or independent contractor, within social security and unemployment insurance statutes. 10 A.L.R.2d 369.

Declaratory relief with respect to unemployment compensation. 14 A.L.R.2d 826.

Leaving employment, or unavailability for particular job or duties, because of sickness or disability, as affecting right to unemployment compensation. 14 A.L.R.2d 1308.

Vested right of applicant for unemployment compensation in mode and manner of computing benefits in effect at time of his discharge or loss of employment. 20 A.L.R.2d 963.

Unemployment compensation: right of successor in business to experience or rating of predecessor for purpose of fixing rate of contributions. 22 A.L.R.2d 673.

Salesman on commission as within unemployment compensation or social security acts. 29 A.L.R.2d 751.

What constitutes "agricultural" or "farm" labor within Social Security or Unemployment Compensation Acts. 53 A.L.R.2d 406.

Right to unemployment compensation of claimant who refuses nonunion employment. 56 A.L.R.2d 1015.

Right to unemployment compensation or social security benefits of one working on his own projects or activities. 65 A.L.R.2d 1182.

Harassment or garnishment by employee's creditor as constituting misconduct connected with employment so as to disqualify employee from unemployment compensation. 86 A.L.R.2d 1013.

Severance payments as affecting right to unemployment compensation. 93 A.L.R.2d 1319.

Failure or delay with respect to filing or reporting requirements as ground for denial of unemployment compensation benefits. 97 A.L.R.2d 752.

Insurance agents or salesmen as within coverage of social security or unemployment compensation acts. 39 A.L.R.3d 872.

Right to unemployment compensation as affected by receipt of pension. 56 A.L.R.3d 520.

Right to unemployment compensation as affected by receipt of Social Security benefits. 56 A.L.R.3d 552.

Eligibility of strikers to obtain public assistance. 57 A.L.R.3d 1303.

Construction of phrase "establishment" or "factory, establishment, or other premises" within unemployment compensation statute rendering employee ineligible during labor dispute or strike at such location. 60 A.L.R.3d 11.

Construction of phrase "stoppage of work" in statutory provision denying unemployment compensation benefits during stoppage resulting from labor dispute. 61 A.L.R.3d 693.

Unemployment compensation: eligibility of participants in sympathy strike or slowdown. 61 A.L.R.3d 746.

What constitutes participation or direct interest in, or financing of, labor dispute or strike within disqualification provisions of unemployment compensation acts. 62 A.L.R.3d 314.

Refusal of nonstriking employee to cross picket line as justifying denial of unemployment compensation benefits. 62 A.L.R.3d 380.

Unemployment compensation: application of labor dispute disqualification for benefits to locked out employee. 62 A.L.R.3d 437.

General principles pertaining to statutory disqualification for unemployment compensation benefits because of strike or labor dispute. 63 A.L.R.3d 88.

Unemployment compensation: harassment or other mistreatment by employer or supervisor as "good cause" justifying abandonment of employment. 76 A.L.R.3d 1089.

Unemployment compensation: eligibility as affected by claimant's insistence upon conditions not common or customary to particular employment. 88 A.L.R.3d 1353.

Unemployment compensation: eligibility as affected by claimant's refusal to accept employment at compensation less than that of previous job. 94 A.L.R.3d 63.

Right to unemployment compensation as affected by claimant's receipt of holiday pay. 3 A.L.R.4th 557.

Leaving or refusing employment for religious reasons as barring unemployment compensation. 12 A.L.R.4th 611.

Unemployment compensation as affected by vacation or payment in lieu thereof. 14 A.L.R.4th 1175.

Eligibility for unemployment compensation as affected by voluntary resignation because of change of location of residence. 21 A.L.R.4th 317.

Unemployment compensation: harassment or other mistreatment by co-worker as "good cause" justifying abandonment of employment. 40 A.L.R.4th 304.

Alcoholism or intoxication as ground for discharge justifying denial of unemployment compensation. 64 A.L.R.4th 1151.

Unemployment compensation: eligibility as affected by claimant's refusal to work at particular times or on particular shifts for domestic or family reasons. 2 A.L.R.5th 475.

Eligibility for unemployment compensation as affected by claimant's voluntary separation or refusal to work alleging that the work is illegal or immoral. 41 A.L.R.5th 123.

Unemployment compensation: Leaving employment in pursuit of education or to attend training as affecting right to unemployment compensation. 47 A.L.R.5th 775.

Leaving employment or unavailability for particular job or duties because of sickness or disability, as affecting right to unemployment compensation. 68 A.L.R.5th 13.

Eligibility for unemployment compensation of employee who retires voluntarily. 75 A.L.R.5th 339.

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation §§ 1 et seq.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 279, 280.

Practice References.

Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Labor and Employment Law (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

Workers' Compensation Emerging Issues Analysis (Matthew Bender).

§ 71-5-3. Public policy.

As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden, which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

HISTORY: Codes, 1942, § 7369; Laws, 1936, ch. 176; Laws, 1936, 1st Ex. ch. 3.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Involuntary unemployment.

1. In general.

An unemployment compensation claimant was not entitled to benefits since excessive garnishments upon his wages constituted "misconduct" connected with his work under § 71-5-513(A)(2), in accordance with the public policy stated in § 71-5-3, the implementation of which is accomplished through contributions of all covered employers into the state employment fund pursuant to §§ Mississippi Employment Sec. Com. v. Borden, Inc., 451 So. 2d 222, 1984 Miss. LEXIS 1787 (Miss. 1984).

A claimant who voluntarily left her employment as a cook in a restaurant was entitled to benefits where her work hours had been reduced by her employer approximately 50 percent, below the cost of hiring an individual to care for her children while she worked. Tate v. Mississippi Employment Sec. Com., 407 So. 2d 109, 1981 Miss. LEXIS 2465 (Miss. 1981).

An employee was not entitled to unemployment compensation benefits where he admitted that he had quit because in his opinion the volume of his employer's work had not been sufficient for his satisfaction. Mississippi Employment Sec. Com. v. Benson, 401 So. 2d 1303, 1981 Miss. LEXIS 2073 (Miss. 1981).

The unemployment compensation law does not infringe any of the sovereign powers retained by the state and recited in the state constitution. Tatum v. Wheeless, 180 Miss. 800, 178 So. 95, 1938 Miss. LEXIS 20 (Miss. 1938).

The unemployment compensation law provides for a trust fund, to be withheld from the state treasury, and hence does not violate or come within the state constitution governing the passage and duration of appropriation laws. Tatum v. Wheeless, 180 Miss. 800, 178 So. 95, 1938 Miss. LEXIS 20 (Miss. 1938).

The unemployment compensation law does not violate the state constitution prohibiting appropriation bills which do not fix the maximum sum to be drawn from the treasury; the fund provided for being a trust fund, and not a fund to be placed in the state treasury, nor a fund for operating the state government. Tatum v. Wheeless, 180 Miss. 800, 178 So. 95, 1938 Miss. LEXIS 20 (Miss. 1938).

2. Involuntary unemployment.

Section 71-5-513(A)(4), which disqualifies an unemployed worker from receiving unemployment compensation benefits when the unemployment is "due to a stoppage of work which exists because of a labor dispute," only applies to the period that the employee is out because of a stoppage of work due to a labor dispute in which the employee chose to leave the job; it has no application to the period beginning when the employee returns to work in good faith only to find that the employer has replaced him or her solely because of the labor dispute, since the employee is then out of work because of something over which he or she has no control. Mississippi Employment Sec. Com. v. Sanderson Plumbing Products, Inc., 604 So. 2d 215, 1992 Miss. LEXIS 5 (Miss. 1992).

The voluntary retirement of an employee who remained available for suitable work disqualified her for unemployment benefits, even though the retirement was induced by the fact that the retirement benefits far exceeded her earnings from the 2 hours per week that she was permitted to work, where the employee had worked 2 to 4 hours per week for several years, and though she was told that her hours might be cut back, she was never told that they were going to be cut; since there was no change in the employee's employment status, there was no evidence that any good cause factor played a role in her decision to relinquish her employment. Mississippi Employment Sec. Com. v. Gaines, 580 So. 2d 1230, 1991 Miss. LEXIS 313 (Miss. 1991).

In an action by an employer against the Mississippi Employment Security Commission (now Department of Employment Security) challenging a ruling that employees were entitled to unemployment benefits as the result of an unjustified lockout by the employer, the circuit court erred in reversing the decision of the Commission where there was substantial evidence to support the finding that the lockout was occasioned solely by the employer and was without justification and that the employees were ready and willing to continue working. Mississippi Employment Sec. Com. v. Georgia-Pacific Corp., 394 So. 2d 299, 1981 Miss. LEXIS 1897 (Miss. 1981).

The benefits of the unemployment compensation law are for the use of persons unemployed through no fault of their own; to be eligible for benefits under the law, the unemployment must be involuntary. Mills v. Mississippi Employment Sec. Com., 228 Miss. 789, 89 So. 2d 727, 1956 Miss. LEXIS 566 (Miss. 1956).

Denial to a union member benefits under the unemployment compensation law because of his refusal to accept nonunion employment is not a denial of property right in violation of the due process and equal protection clauses of the Constitutions of the United States and the State of Mississippi. Mills v. Mississippi Employment Sec. Com., 228 Miss. 789, 89 So. 2d 727, 1956 Miss. LEXIS 566 (Miss. 1956).

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation § 5.

§ 71-5-5. Suspension under federal conditions [Repealed effective July 1, 2023].

The Legislature finds and declares that the existence and continued operation of a federal tax upon employers, against which some portion of the contributions required under this chapter may be credited, will protect Mississippi employers from undue disadvantages in their competition with employers in other states. If at any time, upon a formal complaint to the Governor, he shall find that Title IX of the Social Security Act has been amended or repealed by Congress or has been held unconstitutional by the Supreme Court of the United States, and that, as a result thereof, the provisions of this chapter requiring Mississippi employers to pay contributions will subject them to a serious competitive disadvantage in relation to employers in other states, he shall publish such findings and proclaim that the operation of the provisions of this chapter requiring the payment of contributions and benefits shall be suspended for a period of not more than six (6) months. The Department of Employment Security shall thereupon requisition from the Unemployment Trust Fund all monies therein standing to its credit, and shall deposit such monies, together with any other monies in the Unemployment Compensation Fund, as a special fund in any banks or public depositories in this state in which general funds of the state may be deposited.

In all other cases, and unless the Governor shall issue such proclamation, this chapter shall remain in full force and effect.

If within the aforesaid six-month period the Governor shall find that other federal legislation has been enacted which avoids the competitive disadvantage herein described, he shall forthwith publicly so proclaim, and upon the date of such proclamation, the provisions of this chapter requiring the payment of contributions and benefits shall again become fully operative as of the date of such suspension with the same effect as if such suspension had not occurred. If within such six-month period no such other federal legislation is enacted or the Legislature of this state has not otherwise prescribed, the Department of Employment Security shall, under regulations prescribed by it, refund, without interest, to each employer by whom contributions have been paid his pro rata share of the total contributions paid under this chapter. Any interest or earnings of the fund shall be available to the Department of Employment Security to pay for the costs of making such refunds. When the Department of Employment Security shall have executed the duties herein prescribed and performed such other acts as are incidental to the termination of its duties under this chapter, the Governor shall, by public proclamation, declare that the provisions of this chapter, in their entirety, shall cease to be operative.

HISTORY: Codes, 1942, § 7370; Laws, 1936, 1st Ex. ch. 3; Laws, 2004, ch. 572, § 8; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 8; reenacted and amended, Laws, 2010, ch. 559, § 8; reenacted without change, Laws, 2011, ch. 471, § 8; reenacted without change, Laws, 2012, ch. 515, § 8; Laws, 2013, ch. 309, § 1, eff from and after passage (approved March 6, 2013); reenacted without change, Laws, 2019, ch. 451, § 8, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Federal Aspects— Social Security Act generally, see 42 USCS §§ 301 et seq. Title IX of the Social Security Act, see 42 USCS §§ 1101 et seq.

JUDICIAL DECISIONS

1. In general.

The unemployment compensation law authorizing its suspension for not more than six months if the governor finds that the Federal Social Security Act has been amended or repealed or declared unconstitutional by the Federal Supreme Court, thereby subjecting Mississippi employers to competitive disadvantage, is not objectionable as delegating legislative functions. Tatum v. Wheeless, 180 Miss. 800, 178 So. 95, 1938 Miss. LEXIS 20 (Miss. 1938).

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation § 12.

CJS.

81 C.J.S., Social Security and Public Welfare § 286.

§ 71-5-7. Suspension under state conditions.

If at any time the provisions of this chapter requiring the payment of contributions and benefits shall be held invalid under the Constitution of this state by the Supreme Court of this state or invalid under the United States Constitution by the Supreme Court of the United States, the department shall forthwith requisition from the unemployment trust fund all monies therein standing to the credit of the department, and shall deposit such monies, together with any other monies in the unemployment compensation fund, in any banks or public depositories in this state in which general funds of the state may be deposited. If within six (6) months after the date of such decision the Legislature of this state enacts a new unemployment compensation law, such monies shall be paid into the unemployment compensation fund established thereunder. If within such six-month period the Legislature of this state has not enacted a new unemployment compensation law, the department shall, under regulations prescribed by it, refund, without interest, to each employer by whom contributions have been paid, his pro rata share of the total contributions paid under this chapter. Any interest or earnings of the fund shall be available to the department to pay for the costs of making such refunds. The provisions of this chapter, so far as necessary to the execution by the department of the duties prescribed in this section and to the performance of such other acts as are incidental to the termination of its duties under this chapter, shall remain in full force and effect until the completion thereof.

HISTORY: Codes, 1942, § 7371; Laws, 1936, 1st Ex. ch. 3; Laws, 2013, ch. 309, § 2, eff from and after passage (approved March 6, 2013).

JUDICIAL DECISIONS

1. In general.

This provision does not make an unconstitutional delegation of legislative power. Tatum v. Wheeless, 180 Miss. 800, 178 So. 95, 1938 Miss. LEXIS 20 (Miss. 1938).

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation §§ 11 et seq.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 286 et seq.

§ 71-5-9. Refunds upon termination.

Refunds provided under Sections 71-5-5 and 71-5-7 shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of moneys in their custody.

HISTORY: Codes, 1942, § 7372; Laws, 1936, 1st Ex. ch. 3.

§ 71-5-11. Definitions [Repealed effective July 1, 2023].

As used in this chapter, unless the context clearly requires otherwise:

A. "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year.

B. "Benefit year" with respect to any individual means the period beginning with the first day of the first week with respect to which he or she first files a valid claim for benefits, and ending with the day preceding the same day of the same month in the next calendar year; and, thereafter, the period beginning with the first day of the first week with respect to which he or she next files this or her valid claim for benefits, and ending with the day preceding the same day of the same month in the next calendar year. Any claim for benefits made in accordance with Section 71-5-515 shall be deemed to be a "valid claim" for purposes of this subsection if the individual has been paid the wages for insured work required under Section 71-5-511(e).

C. "Contributions" means the money payments to the State Unemployment Compensation Fund required by this chapter.

D. "Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31.

E. "Department" or "commission" means the Mississippi Department of Employment Security, Office of the Governor.

F. "Executive director" means the Executive Director of the Mississippi Department of Employment Security, Office of the Governor, appointed under Section 71-5-107.

G. "Employing unit" means this state or another state or any instrumentalities or any political subdivisions thereof or any of their instrumentalities or any instrumentality of more than one (1) of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions, any Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe, any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work. All individuals performing services in the employ of an elected fee-paid county official, other than those related by blood or marriage within the third degree computed by the rule of the civil law to such fee-paid county official, shall be deemed to be employed by such county as the employing unit for all the purposes of this chapter. For purposes of defining an "employing unit" which shall pay contributions on remuneration paid to individuals, if two (2) or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one (1) of such corporations, then each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual such amounts actually disbursed to such individual by another of such corporations.

H. "Employer" means:

(1) Any employing unit which,

(a) In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of One Thousand Five Hundred Dollars ($1,500.00) or more, except as provided in paragraph (9) of this subsection, or

(b) For some portion of a day in each of twenty (20) different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year had in employment at least one (1) individual (irrespective of whether the same individual was in employment in each such day), except as provided in paragraph (9) of this subsection;

(2) Any employing unit for which service in employment, as defined in subsection I(3) of this section, is performed;

(3) Any employing unit for which service in employment, as defined in subsection I(4) of this section, is performed;

(4)(a) Any employing unit for which agricultural labor, as defined in subsection I(6) of this section, is performed;

(b) Any employing unit for which domestic service in employment, as defined in subsection I(7) of this section, is performed;

(5) Any individual or employing unit which acquired the organization, trade, business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter;

(6) Any individual or employing unit which acquired its organization, trade, business, or substantially all the assets thereof, from another employing unit, if the employment record of the acquiring individual or employing unit subsequent to such acquisition, together with the employment record of the acquired organization, trade, or business prior to such acquisition, both within the same calendar year, would be sufficient to constitute an employing unit as an employer subject to this chapter under paragraph (1) or (3) of this subsection;

(7) Any employing unit which, having become an employer under paragraph (1), (3), (5) or (6) of this subsection or under any other provisions of this chapter, has not, under Section 71-5-361, ceased to be an employer subject to this chapter;

(8) For the effective period of its election pursuant to Section 71-5-361(3), any other employing unit which has elected to become subject to this chapter;

(9)(a) In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under paragraph (1) or (4)(a) of this subsection, the wages earned or the employment of an employee performing domestic service, shall not be taken into account;

(b) In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under paragraph (1) or (4)(b) of this subsection, the wages earned or the employment of an employee performing services in agricultural labor, shall not be taken into account. If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined an employer for purposes of paragraph (1) of this subsection;

(10) All entities utilizing the services of any employee leasing firm shall be considered the employer of the individuals leased from the employee leasing firm. Temporary help firms shall be considered the employer of the individuals they provide to perform services for other individuals or organizations.

I. "Employment" means and includes:

(1) Any service performed, which was employment as defined in this section and, subject to the other provisions of this subsection, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) Services performed for remuneration for a principal:

(a) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services;

(b) As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, a principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operator of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

However, for purposes of this subsection, the term "employment" shall include services described in paragraph (2)(a) and (b) of this subsection, only if:

(i) The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

(ii) The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

(iii) The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(3) Service performed in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one (1) of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions or any Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe; however, such service is excluded from "employment" as defined in the Federal Unemployment Tax Act by Section 3306(c)(7) of that act and is not excluded from "employment" under paragraph (5) of this subsection.

(4)(a) Services performed in the employ of a religious, charitable, educational, or other organization, but only if the service is excluded from "employment" as defined in the Federal Unemployment Tax Act, 26 USCS Section 3306(c)(8), and

(b) The organization had four (4) or more individuals in employment for some portion of a day in each of twenty (20) different weeks, whether or not such weeks were consecutive, within the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(5) For the purposes of paragraphs (3) and (4) of this subsection, the term "employment" does not apply to service performed:

(a) In the employ of:

(i) A church or convention or association of churches; or

(ii) An organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(b) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry, or by a member of a religious order in the exercise of duties required by such order; or

(c) In the employ of a governmental entity referred to in paragraph (3) of this subsection, if such service is performed by an individual in the exercise of duties:

(i) As an elected official;

(ii) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision or a member of an Indian tribal council;

(iii) As a member of the State National Guard or Air National Guard;

(iv) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

(v) In a position which, under or pursuant to the laws of this state or laws of an Indian tribe, is designated as:

1. A major nontenured policy-making or advisory position, or

2. A policy-making or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week; or

(d) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or

(e) By an inmate of a custodial or penal institution; or

(f) As part of an unemployment work-relief or work-training program assisted or financed, in whole or in part, by any federal agency or agency of a state or political subdivision thereof or of an Indian tribe, by an individual receiving such work relief or work training, unless coverage of such service is required by federal law or regulation.

(6) Service performed by an individual in agricultural labor as defined in paragraph (15)(a) of this subsection when:

(a) Such service is performed for a person who:

(i) During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of Twenty Thousand Dollars ($20,000.00) or more to individuals employed in agricultural labor, or

(ii) For some portion of a day in each of twenty (20) different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor ten (10) or more individuals, regardless of whether they were employed at the same moment of time.

(b) For the purposes of this paragraph (6) any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:

(i) If such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(ii) If such individual is not an employee of such other person within the meaning of paragraph (1) of this subsection.

(c) For the purpose of this paragraph (6), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under paragraph (6)(b) of this subsection:

(i) Such other person and not the crew leader shall be treated as the employer of such individual; and

(ii) Such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his or her own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.

(d) For the purposes of this paragraph (6) the term "crew leader" means an individual who:

(i) Furnishes individuals to perform service in agricultural labor for any other person;

(ii) Pays (either on his or her own behalf or on behalf of such other person) the individuals so furnished by him or her for the service in agricultural labor performed by them; and

(iii) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(7) The term "employment" shall include domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for an employing unit which paid cash remuneration of One Thousand Dollars ($1,000.00) or more in any calendar quarter in the current or the preceding calendar year to individuals employed in such domestic service. For the purpose of this subsection, the term "employment" does not apply to service performed as a "sitter" at a hospital in the employ of an individual.

(8) An individual's entire service, performed within or both within and without this state, if:

(a) The service is localized in this state; or

(b) The service is not localized in any state but some of the service is performed in this state; and

(i) The base of operations or, if there is no base of operations, the place from which such service is directed or controlled is in this state; or

(ii) The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(9) Services not covered under paragraph (8) of this subsection and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this state and the department approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter.

(10) Service shall be deemed to be localized within a state if:

(a) The service is performed entirely within such state; or

(b) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.

(11) The services of an individual who is a citizen of the United States, performed outside the United States (except in Canada), in the

employ of an American employer (other than service which is deemed "employment" under the provisions of paragraph (8), (9) or (10) of this subsection or the parallel provisions of another state's law), if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States; but

(i) The employer is an individual who is a resident of this state; or

(ii) The employer is a corporation which is organized under the laws of this state; or

(iii) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one (1) other state; or

(c) None of the criteria of subparagraphs (a) and (b) of this paragraph are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state; or

(d) An "American employer," for purposes of this paragraph, means a person who is:

(i) An individual who is a resident of the United States; or

(ii) A partnership if two-thirds (2/3) or more of the partners are residents of the United States; or

(iii) A trust if all of the trustees are residents of the United States; or

(iv) A corporation organized under the laws of the United States or of any state.

(12) All services performed by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled, is within this state, notwithstanding the provisions of paragraph (8) of this subsection.

(13) Service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund, or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, 26 USCS Section 3301 et seq., is required to be covered under this chapter, notwithstanding any other provisions of this subsection.

(14) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the department that such individual has been and will continue to be free from control and direction over the performance of such services both under his or her contract of service and in fact; and the relationship of employer and employee shall be determined in accordance

with the principles of the common law governing the relation of master and servant.

(15) The term "employment" shall not include:

(a) Agricultural labor, except as provided in paragraph (6) of this subsection. The term "agricultural labor" includes all services performed:

(i) On a farm or in a forest in the employ of any employing unit in connection with cultivating the soil, in connection with cutting, planting, deadening, marking or otherwise improving timber, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, fur-bearing animals and wildlife;

(ii) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(iii) In connection with the production or harvesting of naval stores products or any commodity defined in the Federal Agricultural Marketing Act, 12 USCS 1141j(f), or in connection with the raising or harvesting of mushrooms, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(iv)(A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half (1/2) of the commodity with respect to which such service is performed;

(B) In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subitem (A), but only if such operators produced more than one-half (1/2) of the commodity with respect to which such service is performed;

(C) The provisions of subitems (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(v) On a farm operated for profit if such service is not in the course of the employer's trade or business;

(vi) As used in paragraph (15)(a) of this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(b) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in paragraph (7) of this subsection, or service performed as a "sitter" at a hospital in the employ of an individual.

(c) Casual labor not in the usual course of the employing unit's trade or business.

(d) Service performed by an individual in the employ of his or her son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his or her father or mother.

(e) Service performed in the employ of the United States government or of an instrumentality wholly owned by the United States; except that if the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, then to the extent permitted by Congress and from and after the date as of which such permission becomes effective, all of the provisions of this chapter shall be applicable to such instrumentalities and to services performed by employees for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers and employing units. If this state should not be certified under the Federal Unemployment Tax Act, 26 USCS Section 3304(c), for any year, then the payment required by such instrumentality with respect to such year shall be deemed to have been erroneously collected and shall be refunded by the department from the fund in accordance with the provisions of Section 71-5-383.

(f) Service performed in the employ of an "employer" as defined by the Railroad Unemployment Insurance Act, 45 USCS Section 351(a), or as an "employee representative" as defined by the Railroad Unemployment Insurance Act, 45 USCS Section 351(f), and service with respect to which unemployment compensation is payable under an unemployment compensation system for maritime employees, or under any other unemployment compensation system established by an act of Congress; however, the department is authorized and directed to enter into agreements with the proper agencies under such act or acts of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner provided in Section 71-5-117 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such act or acts of Congress or who have, after acquiring potential rights to unemployment compensation under such act or acts of Congress, acquired rights to benefits under this chapter.

(g) Service performed in any calendar quarter in the employ of any organization exempt from income tax under the Internal Revenue Code, 26 USCS Section 501(a) (other than an organization described in 26 USCS Section 401(a)), or exempt from income tax under 26 USCS Section 521 if the remuneration for such service is less than Fifty Dollars ($50.00).

(h) Service performed in the employ of a school, college, or university if such service is performed:

(i) By a student who is enrolled and is regularly attending classes at such school, college or university, or

(ii) By the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that

(A) The employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and

(B) Such employment will not be covered by any program of unemployment insurance.

(i) Service performed by an individual under the age of twenty-two (22) who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

(j) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in subsection M of this section.

(k) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and services performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law.

(*l*) Service performed by an individual as an insurance agent or as an insurance solicitor, if all such service performed by such individual is performed for remuneration solely by way of commission.

(m) Service performed by an individual in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, except those employed by political subdivisions, state and local governments, nonprofit organizations and Indian tribes, as defined by this chapter, or any other entities for which coverage is required by federal statute and regulation.

(n) If the services performed during one-half (1/2) or more of any pay period by an employee for the employing unit employing him or her constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half (1/2) of any such pay period by an employee for the employing unit employing him or her do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than thirty-one (31) consecutive days) for which a payment of remuneration is ordinarily made to the employee by the employing unit employing him or her.

(o) Service performed by a barber or beautician whose work station is leased to him or her by the owner of the shop in which he or she works and who is compensated directly by the patrons he or she serves and who is free from direction and control by the lessor.

(p) Service performed by a "direct seller" if:

(i) Such person is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the department prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment; or such person is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment;

(ii) Substantially all the remuneration (whether or not paid in cash) for the performance of the services described in item (i) of this subparagraph is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; and

(iii) The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for federal tax purposes.

J. "Employment office" means a free public employment office or branch thereof, operated by this state or maintained as a part of the state controlled system of public employment offices.

K. "Public employment service" means the operation of a program that offers free placement and referral services to applicants and employers, including job development.

L. "Fund" means the Unemployment Compensation Fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

M. "Hospital" means an institution which has been licensed, certified, or approved by the State Department of Health as a hospital.

N. "Institution of higher learning," for the purposes of this section, means an educational institution which:

(1) Admits as regular students only individuals having a certificate of

graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized in this state to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation;

(4) Is a public or other nonprofit institution;

(5) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher learning for purposes of this section.

O. "Re-employment assistance" means money payments payable to an individual as provided in this chapter and in accordance with Section 3304(a)(4) and 3306(h) of the Federal Unemployment Tax Act and Section 303(a)(5) of the Social Security Act, with respect to his or her unemployment through no fault of his or her own. Wherever the terms "benefits" or "unemployment benefits" appear in this chapter, they shall mean re-employment assistance.

P.(1) "State" includes, in addition to the states of the United States of America, the District of Columbia, Commonwealth of Puerto Rico and the Virgin Islands.

(2) The term "United States" when used in a geographical sense includes the states, the District of Columbia, Commonwealth of Puerto Rico and the Virgin Islands.

(3) The provisions of paragraphs (1) and (2) of this subsection P, as including the Virgin Islands, shall become effective on the day after the day on which the United States Secretary of Labor approves for the first time under Section 3304(a) of the Internal Revenue Code of 1954 an unemployment compensation law submitted to the secretary by the Virgin Islands for such approval.

Q. "Unemployment."

(1) An individual shall be deemed "unemployed" in any week during which he or she performs no services and with respect to which no wages are payable to him or her, or in any week of less than full-time work if the wages payable to him or her with respect to such week are less than his or her weekly benefit amount as computed and adjusted in Section 71-5-505. This definition shall exclude individuals receiving voluntary payments from employers, from any source, that are in lieu of the worker's regular wages. However, individuals receiving voluntary payments of less than their set full weekly wage, as well as individuals who do not work a specified number of hours each week resulting in inconsistent weekly wages, and who are receiving voluntary payments for partial wage substitution, may be considered "unemployed," but would be required to report the gross amount of the voluntary payments to be treated as wages

so the appropriate deductions to the weekly benefit amount can be made. The department shall prescribe regulations applicable to unemployed individuals, making such distinctions in the procedure as to total unemployment, part-total unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work, as the department deems necessary.

(2) An individual's week of total unemployment shall be deemed to commence only after his registration with an employment office, except as the department may by regulation otherwise prescribe.

(3) Unemployment shall not include administrative leave for any week with respect to which:

(a) An employer has designated their employee as being on official administrative leave;

(b) The administrative leave is for a specified period of time;

(c) There is no apparent permanent job separation; and

(d) The employee has received compensation equal to his or her standard compensation.

(4) If the individual on official administrative leave, as designated by the employer, does not receive full compensation in line with his or her standard hours or salary, the individual may be eligible for unemployment insurance benefits as partially unemployed for the wages they are missing.

(5) Any individual on official administrative leave is required to report all compensation received.

R.(1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, except that "wages," for purposes of determining employer's coverage and payment of contributions for agricultural and domestic service means cash remuneration only. Wages shall include payments from employers, from any source, and for any reason, that are in lieu of the employee's regular wages. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department; however, that the term "wages" shall not include:

(a) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his or her employees generally or for a class or classes of his or her employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of:

(i) Retirement, or

(ii) Sickness or accident disability, or

(iii) Medical or hospitalization expenses in connection with sickness or actual disability, or

(iv) Death, provided the employee:

(A) Has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his or her employer, and

(B) Has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit or to receive a cash consideration in lieu of such benefit, either upon his or her withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his or her employment with such employer;

(b) Dismissal payments which the employer is not legally required to make;

(c) Payment by an employer (without deduction from the remuneration of an employee) of the tax imposed by the Internal Revenue Code, 26 USCS Section 3101;

(d) From and after January 1, 1992, the amount of any payment made to or on behalf of an employee for a "cafeteria" plan, which meets the following requirements:

(i) Qualifies under Section 125 of the Internal Revenue Code;

(ii) Covers only employees;

(iii) Covers only noncash benefits;

(iv) Does not include deferred compensation plans.

(2) [Not enacted].

S. "Week" means calendar week or such period of seven (7) consecutive days as the department may by regulation prescribe. The department may by regulation prescribe that a week shall be deemed to be in, within, or during any benefit year which includes any part of such week.

T. "Insured work" means "employment" for "employers."

U. The term "includes" and "including," when used in a definition contained in this chapter, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

V. "Employee leasing arrangement" means any agreement between an employee leasing firm and a client, whereby specified client responsibilities such as payment of wages, reporting of wages for unemployment insurance purposes, payment of unemployment insurance contributions and other such administrative duties are to be performed by an employee leasing firm, on an ongoing basis.

W. "Employee leasing firm" means any entity which provides specified duties for a client company such as payment of wages, reporting of wages for unemployment insurance purposes, payment of unemployment insurance contributions and other administrative duties, in connection with the client's employees, that are directed and controlled by the client and that are providing ongoing services for the client.

X.(1) "Temporary help firm" means an entity which hires its own employees and provides those employees to other individuals or organizations to perform some service, to support or supplement the existing workforce in special situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects, with the expectation that the worker's position will be terminated upon the completion of the specified task or function.

(2) "Temporary employee" means an employee assigned to work for the clients of a temporary help firm.

Y. For the purposes of this chapter, the term "notice" shall include any official communication, statement or other correspondence required under the administration of this chapter, and sent by the department through the United States Postal Service or electronic or digital transfer, via modem or the Internet.

HISTORY: Codes, 1942, § 7440; Laws, 1940, ch. 295, § 13; Laws, 1948, ch. 412, § 10; Laws, 1955, Ex. Sess. ch. 93, § 2; Laws, 1971, ch. 519, § 13; Laws, 1977, ch. 497, § 1; Laws, 1978, ch. 533, § 1; Laws, 1979, ch. 311; Laws, 1981, ch. 343, § 1; Laws, 1983, ch. 371, § 1; Laws, 1985, ch. 406; Laws, 1992, ch. 339, § 1; Laws, 1993, ch. 328, § 1; Laws, 1998, ch. 331, § 1; Laws, 1998, ch. 491, § 1; Laws, 2002, ch. 562, § 1; Laws, 2004, ch. 572, § 9; Laws, 2007, ch. 606, § 3; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 9; reenacted and amended, Laws, 2011, ch. 471, § 9; Laws, 2012, ch. 414, § 1; reenacted without change, Laws, 2012, ch. 515, § 9; Laws, 2013, ch. 309, § 3, eff from and after passage (approved March 6, 2013); reenacted without change, Laws, 2019, ch. 451, § 9, eff from and after April 3, 2019; Laws, 2021, ch. 360, § 1, eff from and after July 1, 2021.

Joint Legislative Committee Note — Section 1 of ch. 331, Laws of 1998, effective from and after July 1, 1998, amended this section. Section 1 of ch. 491, Laws of 1998, effective from and after July 2, 1998, also amended this section. As set out above, this section reflects the language of Section 1 of ch. 491, Laws of 1998, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error throughout the section. The words "subsection I" were changed to "subsection J." The Joint Committee ratified the correction at its July 13, 2009, meeting.

Section 1 of ch. 414, Laws, 2012, effective July 1, 2012, amended this section. Section 9 of ch. 515, Laws, 2012, effective from and after July 1, 2012, reenacted the section without change. As set out above, this section reflects the language of both acts pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the August 16, 2012, meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in internal references as follows: in the undesignated paragraph following subsection I(2)(b), "paragraph (2)(a) and (b) of this subsection" was substituted for "subsection (2)(a) and (b) of this section"; in subsection I(3), "paragraph (5) of this subsection" was substituted for "subsection I(5) of this section"; in subsection I(5), "paragraphs (3) and (4) of this subsection" was substituted for "subsection I(3) and (4) of this section"; in subsection I(5)(c), "paragraph (3) of this subsection" was substituted for "subsection I(3)"; in I(6)(b), "this paragraph (6)" was substituted for "subsection I(6)"; in subsection I(6)(b)(ii), "paragraph (1) of this subsection" was substituted for "subsection I(1)"; in subsection I(6)(d), "this paragraph

(6)" was substituted for "subsection I(6)"; in subsection I(12), "paragraph (8) of this subsection" was substituted for "subsection I(8)"; in subsection I(15)(a), "paragraph (6) of this subsection" was substituted for "subsection I(6) of this section"; in subsection I(15)(b), "paragraph (7) of this subsection" was substituted for "subsection I(7) of this section"; and in subsection P(3), "paragraphs (1) and (2) of this subsection P" was substituted for "paragraphs (1) and (2) of subsection P." The Joint Committee ratified the corrections at its August 20, 2021, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a federal statutory reference in subsection I(15)(a)(iii) by substituting "12 USCS 1141j(f)" for "12 USCS 1141j(g)." The Joint Committee ratified the correction at its August 20, 2021, meeting.

Editor's Notes — Laws of 1977, ch. 497, § 10, provides:

"SECTION 10. In the event the provisions of P.L. 94-566, the Unemployment Compensation Amendments of 1976, which mandate unemployment insurance coverage for state and local government employees, are declared unconstitutional, the amendments, which mandate unemployment insurance coverage for state and local government employees, adopted to Sections 71-5-11, 71-5-351, 71-5-355, 71-5-357, 71-5-359, 71-5-361, 71-5-511, 71-5-513 and 71-5-541, Mississippi Code of 1972, at the 1977 Regular Session of the Legislature shall stand repealed."

Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Amendment Notes — The 2021 amendment inserted "or she" and "or her" everywhere they appear in A through Q(1) and R(1)(a); in Q(1), added the second and third sentences; added Q(3) through (5); and in R(1), added the second sentence.

Cross References — Administration of the comprehensive employment and training act, see § 7-1-355.

Definitions for modified rates of contributions, see § 71-5-355.

Regulations governing payment of benefits to employees of nonprofit organizations, see § 71-5-357.

Provisions relative to the obligations of state boards, state agencies, and political subdivisions under the Mississippi Unemployment Compensation Law, see § 71-5-359.

Period, election, and termination of employing unit, see § 71-5-361.

Payment of benefits, see § 71-5-501.

Benefit eligibility conditions, see § 71-5-511.

Federal Aspects— Definitions of terms in Immigration and Nationality Act, see 8 USCS § 1101.

Admission of non-immigrant laborers, see 8 USCS § 1184.

Agricultural Marketing Act, see 12 USCS §§ 1141 et seq.

Qualified trusts forming part of employer's pension, profit-sharing or stock bonus plan, see 26 USCS § 401.

Organizations exempt from federal tax, see 26 USCS § 501.

Exemption of farmers' cooperatives from tax, see 26 USCS § 521.

Federal Unemployment Tax Act, see 26 USCS §§ 3301 et seq.

Migrant and Seasonal Agricultural Worker Protection Act (successor to former Farm Labor Contractor Registration Act of 1963, 7 USCS §§ 2041 et seq), see 29 USCS §§ 1801 et seq.

Railroad Unemployment Insurance Act, see 45 USCS §§ 351 et seq.

Cafeteria plans qualifying under Section 125 of the Internal Revenue Code, see 26 USCS § 125.

Section 303(a)(5) of the Social Security Act, see 42 USCS § 503(a)(5).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Determination of employment status.
3. —Exercise of control.
4. —Agricultural labor.
5. Self-employed persons.

1. In general.

Employment was not a prerequisite to deducting monies earned by a person during any week in which the person received benefits, and unemployment benefits claimant's bi-weekly payments for service as a part-time alderman constituted wages under Miss Code Ann. § 71-5-11 P. (1), which wages should have been deducted from the benefits under Miss Code Ann. § 71-5-505(1). Miss. Empl. Sec. Comm'n v. Jones, 826 So. 2d 77, 2002 Miss. LEXIS 284 (Miss. 2002).

One may commit the crime of kidnapping either by secretly confining a victim or by confining or imprisoning another against his or her will regardless of whether the confinement is secret; the element of secrecy is not fundamental to a kidnapping charge. Culbert v. State, 800 So. 2d 546, 2001 Miss. App. LEXIS 467 (Miss. Ct. App. 2001).

A laid off employee was improperly denied unemployment compensation for the two week period following his receipt of a lump sum vacation payment since, pursuant to this section, no wages were payable to the employee, in that he had performed no services for his former employer during the two weeks; the vacation pay flowed from services rendered prior to termination of his employment. Further, an administrative rule which provided that pay received after separation from an employer was considered to be "wages," was inconsistent with the legislative definition of "unemployment," and exceeded the powers granted the Commission by § 71-5-115. Buse v. Mississippi Employment Sec. Com., 377 So. 2d 600, 1979 Miss. LEXIS 2527 (Miss. 1979).

The exemption of credit unions paying a privilege tax from all other taxation does not embrace contributions to the unemployment insurance fund. Mutual Credit Union v. Mississippi Employment Sec. Com., 241 Miss. 432, 131 So. 2d 444, 1961 Miss. LEXIS 363 (Miss. 1961).

Contributions levied by the Mississippi Employment Security Commission (now Department of Employments Security) constitute an excise tax, and the statute authorizing the levying of the same is to be construed liberally in favor of the taxpayer and strictly against the taxing power, and all doubts are to be resolved in favor of the taxpayer. Mozingo v. Mississippi Employment Sec. Com., 224 Miss. 375, 80 So. 2d 75, 1955 Miss. LEXIS 503 (Miss. 1955).

In construing this statute it must be assumed that the legislature employed the wards of the statute in their usual and ordinary sense, unless it clearly appeared that they were intended to be used otherwise and to convey a different meaning. Texas Co. v. Wheeless, 185 Miss. 799, 187 So. 880, 1939 Miss. LEXIS 151 (Miss. 1939).

Since the contributions imposed by the statute on an employer are an excise tax, every doubt as to its application must be resolved in favor of the alleged employer and against the taxing power. Texas Co. v. Wheeless, 185 Miss. 799, 187 So. 880, 1939 Miss. LEXIS 151 (Miss. 1939).

2. Determination of employment status.

Administrative law judge's (ALJ) decision that independent operator distributors were agent and commissioned drivers for a corporation was erroneous because the ALJ failed to apply the law correctly; a discussion of the applicability of the factors contained in subsection (J)(2)(a) was absent from the ALJ's opinion, Earthgrains Bakery Group, Inc. v. Miss. Dep't of Empl. Sec., 131 So. 3d 1163, 2014 Miss. LEXIS 99 (Miss. 2014).

Claimant for unemployment benefits was not an employee of a paramedical company, pursuant to Miss. Code Ann. § 71-5-11, because (1) the written agreement between the parties did not constitute an enforceable contract, much less an enforceable employment contract; and (2) the claimant, who was a phlebotomist or paramedical examiner that performed medical-testing services on applicants for insurance policies pursuant to optional work orders, was an independent contractor, under Miss. Code Ann. § 71-3-3(r). MEDS, Inc. v. Miss. Dep't of Empl. Sec., 130 So. 3d 148, 2014 Miss. App. LEXIS 13 (Miss. Ct. App. 2014).

Record failed to support the conclusion of the Mississippi Department of Employment Security that a worker constituted an employee under Miss. Code Ann. § 71-5-11(J)(14) because the worker constituted an independent contractor; the worker set his own hours and received a commission, not an hourly wage, and the employer failed to exercise control, nor did it possess a right of control, over the details of the actual sales work at issue. College Network v. Miss. Dep't of Empl. Sec., 114 So. 3d 740, 2013 Miss. App. LEXIS 179 (Miss. Ct. App. 2013).

Trial court properly overturned an award of unemployment benefits to a claimant because the claimant, a satellite installer, acted as an independent contractor under Miss. Code Ann. § 71-5-11(J)(14). The satellite company did not exercise any control over the installation of the satellite dishes; it merely took the work orders. Miss. Dep't of Empl. Sec. v. Harbin, 11 So. 3d 137, 2009 Miss. App. LEXIS 204 (Miss. Ct. App. 2009).

Caretaker who provided hygienic, feeding, and sitting services to decedent before he died and was hired and paid by the decedent's family members was an employee and was entitled to unemployment benefits upon decedent's death. Estate of Dulaney v. Miss. Empl. Sec. Comm'n, 805 So. 2d 643, 2002 Miss. App. LEXIS 50 (Miss. Ct. App. 2002).

Printing company retained its "eligible employer" status and was entitled to lower rates than those charged to "newly subject employer" when it switched to new "employee leasing firm" to handle various payroll services for it, including reporting of wages and payment of unemployment contributions; although company had previously utilized three different "employee leasing firms," company had complete control over its employees from date of its founding ten years earlier. Clark Printing Co. v. Mississippi Empl. Sec. Comm'n, 681 So. 2d 1328, 1996 Miss. LEXIS 528 (Miss. 1996).

A health care personnel service was not an "employer" liable for contributions under the Mississippi Employment Security Act, where it was engaged in the business of providing health care personnel to hospitals and to individuals on an as-needed basis, the customer paid the service an hourly fee for the work the health care personnel actually performed, and the service paid its health care personnel at an hourly rate. Mississippi Employment Sec. Com. v. Total Care, Inc., 586 So. 2d 834, 1991 Miss. LEXIS 674 (Miss. 1991).

Employees whose jobs were eliminated by technological advances, and who were given the options of terminating employment with a lump sum payment of money, transferring to another job with the same employer in an office either 218 miles, 90 miles, or 81 miles, from the employees' homes, or taking a technological leave of absence, were "unemployed" within the plain meaning of §§ 71-5-11(O) and 71-5-513. Curtis v. Mississippi Employment Sec. Com., 451 So. 2d 736, 1984 Miss. LEXIS 1756 (Miss. 1984).

A worker was unemployed within the meaning of § 71-5-11(0)(1), for purposes of determining his eligibility for benefits under the Employment Security Law, where his weekly wages amounted to less than his weekly benefit, even though he was in fact employed as a school bus driver, working for approximately one and a half hours each morning and each afternoon. McLaurin v. Mississippi Employment Sec. Com., 435 So. 2d 1170, 1983 Miss. LEXIS 2781 (Miss. 1983).

The owner and operator of a barber shop cannot escape liability for unemployment security tax by entering into agreements with barbers, terminable upon notice, whereby each leased a chair upon terms which left their earnings substantially the same as before. Mississippi Employment Sec. Com. v. Logan, 248 Miss. 595, 159 So. 2d 802, 1964 Miss. LEXIS 283 (Miss. 1964).

A real estate broker is not, for unemployment compensation purposes, the employer of salesmen working out of his office as independent contractors compensated by a share in commissions. Mississippi Employment Sec. Com. v. Scott, 242 Miss. 514, 137 So. 2d 164, 1962 Miss. LEXIS 573 (Miss. 1962).

In determining whether an employer and employee relationship exists for the purposes of unemployment compensation contributions, both the contract of service and the facts of operation thereunder must be considered. Mozingo v. Mississippi Employment Sec. Com., 224 Miss. 375, 80 So. 2d 75, 1955 Miss. LEXIS 503 (Miss. 1955).

The legislative intent of the test for the employer-employee relationship under this statute is obtained by an application of the principles of the common law of master and servant. Mississippi Employment Sec. Com. v. Heidelberg Hotel Co., 211 Miss. 104, 51 So. 2d 47, 1951 Miss. LEXIS 337 (Miss. 1951).

Janitor employed by bank for about one hour each weekday at designated monthly wage, the bank furnishing all his implements and supplies, was an employee and not an independent contractor within the meaning of the unemployment compensation law, notwithstanding that he did his work at the bank other than during banking hours and without supervision, and that during the balance of the day he was employed by the bank's attorney as a member of the latter's household staff. First Nat'l Bank v. Mississippi Unemployment Compensation Com., 199 Miss. 97, 23 So. 2d 534, 1945 Miss. LEXIS 272 (Miss. 1945).

Even where skill is required, if occupation is one which is ordinarily considered as a function of the regular members of the household or an incident of the business establishment of the employer, there is an inference that the actor is a servant and not an independent contractor. First Nat'l Bank v. Mississippi Unemployment Compensation Com., 199 Miss. 97, 23 So. 2d 534, 1945 Miss. LEXIS 272 (Miss. 1945).

A servant regularly employed to labor for wages upon the domestic or business premises of his employer with the tools and equipment of the employer, although arrayed in the livery of an independent contractor, is still a servant. First Nat'l Bank v. Mississippi Unemployment Compensation Com., 199 Miss. 97, 23 So. 2d 534, 1945 Miss. LEXIS 272 (Miss. 1945).

A similar contract shows that the distributor was a capitalist and employer in each instance, instead of a hired man, so as to preclude liability against the oil company for contributions. American Oil Co. v. Wheeless, 185 Miss. 521, 187 So. 889, 1939 Miss. LEXIS 152 (Miss. 1939).

In view of the language used in paragraphs, h, i, and n, under this section [Code 1942, § 7440], it is clear from the whole contract that the service which is to be performed for wages in the ordinary sense was to be under a contract of hire, and that if the compensation was to be paid in salaries or commissions it was likewise to be payable for the services rendered under a contract of hire. Texas Co. v. Wheeless, 185 Miss. 799, 187 So. 880, 1939 Miss. LEXIS 151 (Miss. 1939).

A contract between an oil company and a distributor or consignee of its petroleum products at wholesale was not a "contract for hire" within the purview of the statute, so as to render such oil company liable for contributions under the statute as an employer of such distributor and the latter's employees, where all of the provisions of the contract were such as would be implied by law, in the absence of express stipulations, in any agreement whereby one sells the goods of another as a consignee, factor, commission merchant, or otherwise on commission, and the contract did not show the existence of the relationship of master and servant, and particularly in view of the fact that most of the distributors of petroleum products were of a class of capitalists and investors engaged in other businesses, whom the statute was not designed to help. Texas Co. v. Wheeless, 185 Miss. 799, 187 So. 880, 1939 Miss. LEXIS 151 (Miss. 1939).

The meaning of "contract for hire" is the criterion in determining "employment" under the statute. Texas Co. v. Wheeless, 185 Miss. 799, 187 So. 880, 1939 Miss. LEXIS 151 (Miss. 1939).

3. —Exercise of control.

Record showed that an employer/employee relationship existed between the employer and the claimant under Miss. Code Ann. § 71-5-11(J)(14). The record contained ample evidence that the claimant performed a service for the employer for wages and that the employer retained control over the claimant, in that the claimant was paid hourly, the employer set his work hours and provided some of his tools, he was not required to provide his own insurance, and the employer hired the claimant to perform general construction work, which required no specialized training. Sun Vista, Inc. v. Miss. Dep't of Empl. Sec., 52 So. 3d 1262, 2011 Miss. App. LEXIS 43 (Miss. Ct. App. 2011).

Under Miss. Code Ann. § 71-5-11(J)(14) and the applicable factors, a worker doing product demonstrations was not an employee of a company where the company provided no tools, materials, or supplies, the worker was paid by a manufacturer or retailer, and the information relating to the job was provided by the manufacturer. Miss. Dep't of Empl. Sec. v. Product Connections, LLC, 963 So. 2d 1185, 2007 Miss. App. LEXIS 262 (Miss. Ct. App. 2007).

Printing company retained its "eligible employer" status and was entitled to lower rates than those charged to "newly subject employer" when it switched to new "employee leasing firm" to handle various payroll services for it, including reporting of wages and payment of unemployment contributions; although company had previously utilized three different "employee leasing firms," company had complete control over its employees from date of its founding ten years earlier. Clark Printing Co. v. Mississippi Empl. Sec. Comm'n, 681 So. 2d 1328, 1996 Miss. LEXIS 528 (Miss. 1996).

A medical placement service for nurses, nurses' aides, and sitters was not an "employer" within the meaning of the Mississippi Employment Security Law since the service did not exercise sufficient direction and control over the workers to establish an employer/employee relationship. Mississippi Employment Sec. Com. v. PDN, Inc., 586 So. 2d 838, 1991 Miss. LEXIS 675 (Miss. 1991).

Where a salesman of a confection distributor owned his own trucks and equipment, hired his own salesmen and helpers, fixed their hours of work and vacation time, and was in complete control of the operations of his business free from any direction of the distributor, and such salesmen were not covered by workmen's compensation and were not reported for social security purposes by the distributor, such salesmen were not employees of the distributor within the statute levying an assessment of contribution. Mozingo v. Mississippi Employment Sec. Com., 224 Miss. 375, 80 So. 2d 75, 1955 Miss. LEXIS 503 (Miss. 1955).

Where a hotel hired an orchestra under a contract which designated the hotel as an employer and the musicians as employees, but the hotel exercised no control over the operation of the orchestra, the musicians were not employees of the hotel and the hotel was not liable for the state unemployment taxes. Mississippi Employment Sec. Com. v. Heidelberg Hotel Co., 211 Miss. 104, 51 So. 2d 47, 1951 Miss. LEXIS 337 (Miss. 1951).

This section [Code 1942, § 7440], defining an employer subject to the provisions of the unemployment compensation law (subsection h(1) and (4)), as applied to a corporation which did not employ the minimum of 8 persons required by the law but which was controlled by another corporation owning a majority of the stock, both corporations being controlled by the same interests and both corporations, together, having more than 8 nonexempt employees, did not violate the equal protection clauses of the state and federal constitutions. Warren Brokerage Co. v. Mississippi Unemployment Compensation Com., 194 Miss. 855, 13 So. 2d 227, 1943 Miss. LEXIS 98 (Miss. 1943), Warren Credit Corp. v. Mississippi Unemployment Compensation Com., 13 So. 2d 228 (Miss. 1943).

Where defendant, who operated both a drug business employing six persons and a dairy business employing four persons, in order to evade liability for benefits under the unemployment compensation law deeded the dairy to his wife, who used the proceeds therefrom in remodeling and furnishing their home, but defendant retained control thereof, both businesses were under common control of defendant and therefore subject to the law. Mississippi Unemployment Compensation Com. v. Avent, 192 Miss. 94, 4 So. 2d 684 (Miss. 1941), dismissed, Avent v. Mississippi Unemployment Co. Com., 316 U.S. 641, 62 S.

Ct. 947, 86 L. Ed. 1727, 1942 U.S. LEXIS 752 (U.S. 1942).

Construction of this statute, in ascertaining the number of employees, to apply to both a drug store operated by defendant and a dairy business which he had deeded to his wife, did not deprive him of his property without due process of law or deny him equal protection of the laws in violation of the state and federal constitutions where, although the wife was the nominal owner of the dairy, the facts showed that both businesses were under the control and domination of defendant. Mississippi Unemployment Compensation Com. v. Avent, 192 Miss. 94, 4 So. 2d 684 (Miss. 1941), dismissed, Avent v. Mississippi Unemployment Co. Com., 316 U.S. 641, 62 S. Ct. 947, 86 L. Ed. 1727, 1942 U.S. LEXIS 752 (U.S. 1942).

"Contract of hire" within the meaning of the statute embraces, and was intended to embrace, only those who are under the control and direction of the alleged employer in the performance of the details of their work and in the use of the means employed, being the common law meaning of the term "employee" under a contract of hire. Texas Co. v. Wheeless, 185 Miss. 799, 187 So. 880, 1939 Miss. LEXIS 151 (Miss. 1939).

4. —Agricultural labor.

Work performed by farming corporation's employees in land clearing operations on land owned or leased by the corporation for the production of soybeans was exempt agricultural labor within the meaning of this section [Code 1942, § Mississippi Employment Sec. Com. v. Ballard Co., 228 So. 2d 361, 1969 Miss. LEXIS 1384 (Miss. 1969).

Land clearing operations engaged in by employees of an agricultural corporation upon lands owned by others and not leased to the corporation did not constitute exempt agricultural labor. Mississippi Employment Sec. Com. v. Ballard Co., 228 So. 2d 361, 1969 Miss. LEXIS 1384 (Miss. 1969).

The delivery of live chickens to a corporation engaged in killing, cleaning, and processing poultry for marketing at retail constitutes a delivery to a terminal market for distribution for consumption within the provision of (i)(6)(A)(iv) of this section [Code 1942, § Mississippi Employment Sec. Com. v. B. C. Rogers & Sons, Inc., 193 So. 2d 564, 1967 Miss. LEXIS 1549 (Miss. 1967).

Employees of a corporation working only at the job of processing chickens for the consumer market are not engaged in agricultural labor, and their services are not exempt under the provisions of (i)(6)(A)(iv) of this section [Code 1942, § 7440]; for their services are performed after the delivery of live chickens to a terminal market to be there processed and prepared and distributed to retail outlets for sale to the consuming public. Mississippi Employment Sec. Com. v. B. C. Rogers & Sons, Inc., 193 So. 2d 564, 1967 Miss. LEXIS 1549 (Miss. 1967).

5. Self-employed persons.

Administrative law judge's decision that independent operator distributors were agent and commissioned drivers for a corporation was erroneous because the distributors did not satisfy the requirements for classification as employees, and they were employees of their own corporate entities. The distributors did not receive remuneration for services from the corporation since they were not being paid a salary, wages, or commission by the corporation, and they did not have personal service contracts. Earthgrains Bakery Group, Inc. v. Miss. Dep't of Empl. Sec., 131 So. 3d 1163, 2014 Miss. LEXIS 99 (Miss. 2014).

The purpose of this statute is not to protect persons self-employed, and only wage earners can become eligible for unemployment compensation benefits. Mississippi Employment Sec. Com. v. Medlin, 252 Miss. 146, 171 So. 2d 496, 1965 Miss. LEXIS 1085 (Miss. 1965).

Wages for "personal services" as defined in this section [Code 1942, § 7440] is intended to mean personal services performed for an employer and does not include all services personally rendered by the claimant as a self-employed person. Mississippi Employment Sec. Com. v. Medlin, 252 Miss. 146, 171 So. 2d 496, 1965 Miss. LEXIS 1085 (Miss. 1965).

OPINIONS OF THE ATTORNEY GENERAL

The position of municipal election commissioner falls within Section 71-5-11(I); therefore, a city is not responsible for any portion of the unemployment benefits that may be due one serving as municipal election commissioner. Lawrence, June 2, 1995, A.G. Op. #95-0203.

RESEARCH REFERENCES

ALR.

Newspaper boy or other news carrier as independent contractor or employee for purposes of respondeat superior. 55 A.L.R.3d 1216.

Construction of phrase "establishment" or "factory, establishment, or other premises" within unemployment compensation statute rendering employee ineligible during labor dispute or strike at such location. 60 A.L.R.3d 11.

Part-time or intermittent workers as covered by or as eligible for benefits under state unemployment compensation act. 95 A.L.R.3d 891.

Unemployment compensation: trucker as employee or independent contractor. 2 A.L.R.4th 1219.

Right to unemployment compensation or social security benefits of teacher or other school employee. 33 A.L.R.5th 643.

What constitutes "agricultural" or "farm" labor within social-security or unemployment-compensation acts. 60 A.L.R.5th 459.

Validity and construction of domestic service provisions of fair labor standards act (29 U.S.C.A. §§ 201 et seq.) 165 A.L.R. Fed. 163.

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation §§ 18 et seq.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 298 et seq.

Practice References.

Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Labor and Employment Law (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

Workers' Compensation Emerging Issues Analysis (Matthew Bender).

§ 71-5-13. Reciprocal arrangements.

(1) The department is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government, whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in Section 71-5-11, subsection I, or under similar provisions in the unemployment compensation laws of such other states, shall be deemed to be engaged in employment performed entirely within this state or within one (1) of such other states and whereby potential rights to benefits accumulated under the unemployment compensation laws of one or more states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the department finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

(2) The department is also authorized to enter into arrangements with the appropriate agencies of other states or of the federal government:

(a) Whereby wages or services upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state or of the federal government shall be deemed to be wages for employment by employers for the purposes of Sections 71-5-501 through 71-5-507 and Section 71-5-511(e), provided such other state agency or agency of the federal government has agreed to reimburse the fund for such portion of benefits paid under this chapter upon the basis of such wages or services as the department finds will be fair and reasonable as to all affected interests; and

(b) Whereby the department will reimburse other state or federal agencies charged with the administration of unemployment compensation laws with such reasonable portion of benefits paid under the law of any such other states or of the federal government, upon the basis of employment or wages for employment by employers, as the department finds will be fair and reasonable as to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of Sections 71-5-451 through 71-5-459. The department is hereby authorized to make to other state or federal agencies, and receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements pursuant to this section.

(3) The department is also authorized, in its discretion, to enter into or cooperate in arrangements with any federal agency whereby the facilities and services of the personnel of the department may be utilized for the taking of claims and the payment of unemployment compensation or allowances under any federal law enacted for the benefit of discharged members of the Armed Forces.

(4) The department shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this chapter with his wages and employment covered under the unemployment compensation laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for:

(a) Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two (2) or more state unemployment compensation laws; and

(b) Avoiding the duplicate use of wages and employment by reason of such combining.

HISTORY: Codes, 1942, § 7441; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 4; Laws, 1971, ch. 519, § 14; Laws, 2013, ch. 309, § 14, eff from and after passage (approved March 6, 2013).

RESEARCH REFERENCES

Am. Jur.
76 Am. Jur. 2d, Unemployment Compensation § 30.

CJS.
81 C.J.S., Social Security and Public Welfare §§ 471, 472.

§ 71-5-15. Non-liability of state.

Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemployment compensation fund; and neither the state nor the commission shall be liable for any amount in excess of such sums.

HISTORY: Codes, 1942, § 7439; Laws, 1936, ch. 176.

§ 71-5-17. Representation in court.

(1) In any civil action to enforce the provisions of this chapter, the commission, the board of review, and the state may be represented by any qualified attorney who is employed by the commission and is designated by it for this purpose or, at the commission's request, by the attorney general.

(2) All criminal actions for violation of any provision of this chapter, or of any rules and regulations issued pursuant thereto, shall be prosecuted by the attorney general of the state or, at his request and under his direction, by the prosecuting attorney of any county in which the employer has a place of business or the violator resides.

HISTORY: Codes, 1942, § 7438; Laws, 1936, ch. 176; Laws, 1938, ch. 147.

Cross References — Duty of attorney general to act as counsel in suits touching official duty or trust of state officers, see § 7-5-39.

§ 71-5-19. Penalties; when overpayment of benefits occurs; reciprocity with other states in collection of overpayment [Repealed effective July 1, 2023].

(1) Whoever makes a false statement or representation knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this chapter or under an employment security law of any other state, of the federal government or of a foreign government, either for himself or for any other person, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment for not longer than thirty (30) days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(2) Any employing unit, any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming

or remaining subject hereto, or to avoid or reduce any contribution or other payment required from any employing unit under this chapter, or who willfully fails or refuses to make any such contribution or other payment, or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment; and each such false statement, or representation, or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense. In lieu of such fine and imprisonment, the employing unit or representative, or both employing unit and representative, if such representative is an employing unit in this state and is found to be a party to such violation, shall not be eligible for a contributions rate of less than five and four-tenths percent (5.4%) for the tax year in which such violation is discovered by the department and for the next two (2) succeeding tax years.

(3) Any person who shall willfully violate any provision of this chapter or any other rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment; and each day such violation continues shall be deemed to be a separate offense. In lieu of such fine and imprisonment, the employing unit or representative, or both employing unit and representative, if such representative is an employing unit in this state and is found to be a party to such violation, shall not be eligible for a contributions rate of less than five and four-tenths percent (5.4%) for the tax year in which the violation is discovered by the department and for the next two (2) succeeding tax years.

(4)(a) An overpayment of benefits occurs when a person receives benefits under this chapter:

(i) While any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his case;

(ii) While he was disqualified from receiving benefits; or

(iii) When such person receives benefits and is later found to be disqualified or ineligible for any reason, including, but not limited to, a redetermination or reversal by the department or the courts of a previous decision to award such person benefits.

(b) Any person receiving an overpayment shall, in the discretion of the department, be liable to have such sum deducted from any future benefits payable to him under this chapter and shall be liable to repay to the department for the Unemployment Compensation Fund a sum equal to the overpayment amount so received by him; and such sum shall be collectible in the manner provided in Sections 71-5-363 through 71-5-383 for the collection of past-due contributions. In addition to Sections 71-5-363 through 71-5-383, the following shall apply to cases involving damages for overpaid unemployment benefits which have been obtained and/or received through fraud as defined by department regulations and laws governing the department. By definition, fraud can include failure to report earnings while filing for unemployment benefits. In the event of fraud, a penalty of twenty percent (20%) of the amount of the overpayment shall be assessed. Three-fourths (3/4) of that twenty percent (20%) penalty shall be deposited into the unemployment trust fund and shall be used only for the purpose of payment of unemployment benefits. The remainder of that twenty percent (20%) penalty shall be deposited into the Special Employment Security Administrative Fund. Interest on the overpayment balance shall accrue at a rate of one percent (1%) per month on the unpaid balance until repaid and shall be deposited into the Special Employment Security Administration Fund. All interest, penalties and damages deposited into the Special Employment Security Administration Fund shall be used by the department for administration of the Mississippi Department of Employment Security.

(c) Any such judgment against such person for collection of such overpayment shall be in the form of a seven-year renewable lien. Unless action be brought thereon prior to expiration of the lien, the department must refile the notice of the lien prior to its expiration at the end of seven (7) years. There shall be no limit upon the number of times the department may refile notices of liens for collection of overpayments.

(d) All warrants issued by the department for the collection of any unemployment tax or for an overpayment of benefits imposed by statute and collected by the department shall be used to levy on salaries, compensation or other monies due the delinquent employer or claimant. No such warrant shall be issued until after the delinquent employer or claimant has exhausted all appeal rights associated with the debt. The warrants shall be served by mail or by delivery by an agent of the department on the person or entity responsible or liable for the payment of the monies due the delinquent employer or claimant. Once served, the employer or other person owing compensation due the delinquent employer or claimant shall pay the monies over to the department in complete or partial satisfaction of the liability. An answer shall be made within thirty (30) days after service of the warrant in the form and manner determined satisfactory by the department. Failure to pay the money over to the department as required by this section shall result in the served party being personally liable for the full amount of the monies owed and the levy and collection process may be issued against the party in the same manner as other debts owed to the department. Except as otherwise provided by this section, the answer, the amount payable under the warrant and the obligation of the payor to continue payment shall be governed by the garnishment laws of this state but shall be payable to the department.

(5) The department, by agreement with another state or the United States, as provided under Section 303(g) of the Social Security Act, may recover any overpayment of benefits paid to any individual under the laws of this state or of another state or under an unemployment benefit program of the United

States. Any overpayments subject to this subsection may be deducted from any future benefits payable to the individual under the laws of this state or of another state or under an unemployment program of the United States.

HISTORY: Codes, 1942, § 7437; Laws, 1936, ch. 176; Laws, 1938, ch. 147; Laws, 1952, ch. 383, § 3; Laws, 1977, ch. 351; Laws, 1985, ch. 414; Laws, 1986, ch. 331; Laws, 1992, ch. 339, § 2; Laws, 1994, ch. 303, § 1; Laws, 2000, ch. 412, § 1; Laws, 2004, ch. 572, § 10; Laws, 2007, ch. 606, § 4; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 10; reenacted without change, Laws, 2010, ch. 559, § 9; reenacted without change, Laws, 2011, ch. 471, § 10; reenacted and amended, Laws, 2012, ch. 515, § 10; Laws, 2013, ch. 309, § 4, eff from and after passage (approved March 6, 2013); reenacted without change, Laws, 2019, ch. 451, § 10, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Unemployment Compensation Fund, see §§ 71-5-451 through 71-5-459.

Federal Aspects— Section 303(g) of the Social Security Act, see 42 USCS § 503(g).

JUDICIAL DECISIONS

1. In general.

Claimant was obligated to repay an overpayment of unemployment compensation benefits because the claimant voluntarily relocated to another state but was paid benefits for two weeks following the departure. Jackson v. Miss. Dep't of Empl. Sec., 134 So. 3d 379, 2014 Miss. App. LEXIS 124 (Miss. Ct. App. 2014).

Mississippi Department of Employment Security was not entitled to use collection actions to recover unemployment benefits paid where there was no nondisclosure or fraud in the case of an employee who was later disqualified for misconduct; even if voluntary repayment was allowed, the language of the notice to the employee did not suggest that it was voluntary in nature. Acy v. Miss. Empl. Sec. Comm'n, 2007 Miss. App. LEXIS 54 (Miss. Ct. App. Feb. 6, 2007).

Employee admitted she voluntarily left her job in Mississippi to pursue educational opportunities. Thus, pursuant to Miss. Code Ann. § 71-5-513 A(1)(a) she was not entitled to unemployment benefits, and under Miss. Code Ann. § 71-5-19(4), she was obligated to repay said benefits that she was not entitled to. Westbrook v. Miss. Empl. Sec. Comm'n, 910 So. 2d 1135, 2005 Miss. App. LEXIS 203 (Miss. Ct. App. 2005).

Although Miss. Code Ann. § 71-5-19(4) clearly gave the Mississippi Employment Security Commission (MESC) (now Department of Employment Security) the right to seek full repayment and there was not a requirement of any fraudulent intent in order to do so, the MESC's decision to seek full repayment of unemployment benefits was arbitrary and capricious, because the claimant's failure to testify did not amount to fraud. Miss. Empl. Sec. Comm'n v. Jones, 826 So. 2d 77, 2002 Miss. LEXIS 284 (Miss. 2002).

As there was no fraud committed by former employee in seeking unemployment benefits, the Mississippi Employment Security Commission (now Department of Employment Security) could not pursue active collection measures against the employee for benefits that were paid but later revoked. Caraway v. Miss. Empl. Sec. Comm'n, 826 So. 2d 100, 2002 Miss. App. LEXIS 483 (Miss. Ct. App. 2002).

Unemployment benefits paid to company employees during a strike could not be recouped by the Mississippi Employment Security Commission (now Department of Employment Security) as a result of a monetary settlement of unfair labor practice charges before the National Labor Relations Board, since §§ 71-5-19(4) and 71-5-517 provided no basis, implicit or explicit, for recoupment of the benefits where there was no evidence of wrongdoing or misrepresentation by the employees. Jones v. Mississippi Employment Sec. Comm'n, 648 So. 2d 1138, 1995 Miss. LEXIS 14 (Miss. 1995).

Findings by Board of Review of Employment Security Commission (now Department of Employment Security) that claimant was overpaid because of error in initial evaluation of claim was determination of fact which should not be reversed by circuit court since it was supported by substantial evidence, but question whether overpayment could be collected was not passed upon by referee or Board, and thus court should not pass upon questions of law not determined by administrative agencies. Mississippi Employment Sec. Com. v. Sellers, 505 So. 2d 281, 1987 Miss. LEXIS 2480 (Miss. 1987).

RESEARCH REFERENCES

ALR.

Criminal liability for wrongfully obtaining unemployment benefits. 80 A.L.R.3d 1280.

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation §§ 195, 197-200.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 285, 337-342.

§ 71-5-21. Saving clause.

The legislature reserves the right to amend or repeal all or any part of this chapter at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time.

HISTORY: Codes, 1942, § 7443; Laws, 1940, ch. 295.

ARTICLE 3.

MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY.

Sec.
71-5-101. Organization [Repealed effective July 1, 2023].
71-5-103 and 71-5-105. Repealed.
71-5-107. Executive officer [Repealed effective July 1, 2023].
71-5-109. Board of review [Repealed effective July 1, 2023].
71-5-111. Employment security administration fund [Repealed effective July 1, 2023].
71-5-112. Funds to clear through state treasury; laws governing expenditures [Repealed effective July 1, 2023].
71-5-113. Funds received from the Social Security Board [Repealed effective July 1, 2023].
71-5-114. Special employment security administration fund [Repealed effective July 1, 2023].

Sec.
71-5-115. Duties and powers of executive director [Repealed effective July 1, 2023].
71-5-116. Annual report tracking data from contractors to be used to improve workforce training programs.
71-5-117. Regulations and general rules [Repealed effective July 1, 2023].
71-5-119. Publication [Repealed effective July 1, 2023].
71-5-121. Personnel [Repealed effective July 1, 2023].
71-5-123. Advisory councils [Repealed effective July 1, 2023].
71-5-125. Promotion of employment [Repealed effective July 1, 2023].
71-5-127. Records and reports; confidentiality of information [Repealed effective July 1, 2023].
71-5-129. Destruction of useless records [Repealed effective July 1, 2023].
71-5-131. Privileged communications [Repealed effective July 1, 2023].
71-5-133. Failure to produce records [Repealed effective July 1, 2023].
71-5-135. Failure to make reports [Repealed effective July 1, 2023].
71-5-137. Oaths and witnesses [Repealed effective July 1, 2023].
71-5-139. Subpoenas [Repealed effective July 1, 2023].
71-5-141. Protection against self-incrimination [Repealed effective July 1, 2023].
71-5-143. State-federal cooperation [Repealed effective July 1, 2023].
71-5-145. 1235 Echelon Parkway named the Henry J. Kirksey Building.

§ 71-5-101. Organization [Repealed effective July 1, 2023].

There is established the Mississippi Department of Employment Security, Office of the Governor. The Department of Employment Security shall be the Mississippi Employment Security Commission and shall retain all powers and duties as granted to the Mississippi Employment Security Commission. Wherever the term "Employment Security Commission" appears in any law, the same shall mean the Mississippi Department of Employment Security, Office of the Governor. The Executive Director of the Department of Employment Security may assign to the appropriate offices such powers and duties deemed appropriate to carry out the lawful functions of the department.

HISTORY: Codes, 1942, §§ 7399, 7400; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, §§ 5a, 5b; Laws, 2004, ch. 572, § 11; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 11; reenacted without change, Laws, 2010, ch. 559, § 10; reenacted without change, Laws, 2011, ch. 471, § 11; reenacted without change, Laws, 2012, ch. 515, § 11, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 11, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Power of governor to make appointments and fill vacancies, see § 7-1-5.

RESEARCH REFERENCES

CJS.
81 C.J.S., Social Security and Public Welfare §§ 467 et seq.

§§ 71-5-103 and 71-5-105. Repealed.

Repealed by Laws, 2004, ch. 572, § 59 effective from and after July 1, 2004.

§ 71-5-103. Codes, 1942, § 7401; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, § 5c, eff July 1, 1948.

§ 71-5-105. Codes, 1942, § 7402; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, § 5d; Laws, 1975, ch. 514, eff from and after July 1, 1975.

Editor's Notes — Former Section 71-5-103 was entitled: "Meetings."
Former Section 71-5-105 was entitled: "Salaries."

§ 71-5-107. Executive officer [Repealed effective July 1, 2023].

The department shall administer this chapter through a full-time salaried executive director, to be appointed by the Governor, with the advice and consent of the Senate. He shall be responsible for the administration of this chapter under authority delegated to him by the Governor.

HISTORY: Codes, 1942, § 7403; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, § 5e; Laws, 2004, ch. 572, § 12; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 12; reenacted without change, Laws, 2010, ch. 559, § 11; reenacted without change, Laws, 2011, ch. 471, § 12, reenacted without change, Laws, 2012, ch. 515, § 12, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 12, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:
"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

RESEARCH REFERENCES

CJS.
81 C.J.S., Social Security and Public Welfare §§ 467 et seq.

§ 71-5-109. Board of review [Repealed effective July 1, 2023].

There is created a Board of Review consisting of three (3) members to be appointed by the executive director. The executive director shall designate one (1) member of the Board of Review as chairman. Each member shall be paid a salary or per diem at a rate to be determined by the executive director, and such expenses as may be allowed by the executive director. All salaries, per diem and expenses of the Board of Review shall be paid from the Employment Security Administration Fund.

HISTORY: Codes, 1942, § 7404; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, § 5f; Laws, 2004, ch. 572, § 13; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 13; reenacted without change, Laws, 2010, ch. 559, § 12; reenacted without change, Laws, 2011, ch. 471, § 13; reenacted without change, Laws, 2012, ch. 515, § 13, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 13, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

JUDICIAL DECISIONS

1. In general.

In proceeding by board of review for order compelling an individual to produce stock books and payrolls of corporation, wherein chancellor refused order and issued restraining order against enforcement of duces tecum writ issued by commission, restraining order properly applied against commission as against contention that commission was not a party to the proceeding, since under the statute and also under the facts of the case, the commission was so connected with the board of review that the restraining order could issue against it as a matter of proper procedure. Board of Review v. Williams, 195 Miss. 618, 15 So. 2d 48, 1943 Miss. LEXIS 138 (Miss. 1943).

RESEARCH REFERENCES

CJS.

81 C.J.S., Social Security and Public Welfare §§ 467 et seq.

§ 71-5-111. Employment security administration fund [Repealed effective July 1, 2023].

There is created in the State Treasury a special fund to be known as the Employment Security Administration Fund. All monies which are deposited or paid into this fund are appropriated and made available to the department. All monies in this fund shall be expended solely for the purpose of defraying the cost of administration of this chapter, and for no other purpose whatsoever. The fund shall consist of all monies appropriated by this state and all monies received from the United States of America, or any agency thereof, or from any other source for such purpose. Notwithstanding any provision of this section, all monies requisitioned and deposited in this fund pursuant to Section 71-5-457 shall remain part of the Employment Security Administration Fund and shall be used only in accordance with the conditions specified in that section. All monies in this fund shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Employment Security Administration Fund under this chapter.

HISTORY: Codes, 1942, § 7421; Laws, 1940, ch. 295, § 11; Laws, 1948, ch. 412, § 8a; Laws, 1958, ch. 536, § 2(a); Laws, 2004, ch. 572, § 14; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 14; reenacted without change, Laws, 2010, ch. 559, § 13; reenacted without change, Laws, 2011, ch. 471, § 14; reenacted without change, Laws, 2012, ch. 515, § 14, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 14, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Special employment security administration fund and its uses, see § 71-5-114.

JUDICIAL DECISIONS

1. In general.

An unemployment compensation claimant was not entitled to benefits since excessive garnishments upon his wages constituted "misconduct" connected with his work under § 71-5-513(A)(2), in accordance with the public policy stated in § 71-5-3, the implementation of which is accomplished through contributions of all covered employers into the state employment fund pursuant to §§ Mississippi Employment Sec. Com. v. Borden, Inc., 451 So. 2d 222, 1984 Miss. LEXIS 1787 (Miss. 1984).

The state employment security commission is not exempted from the payment of court costs incurred in connection with litigation in which it engages. Mississippi Employment Sec. Com. v. Wilks, 251 Miss. 744, 171 So. 2d 157, 1965 Miss. LEXIS 898 (Miss. 1965).

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation § 2.

CJS.

81 C.J.S., Social Security and Public Welfare § 353.

§ 71-5-112. Funds to clear through state treasury; laws governing expenditures [Repealed effective July 1, 2023].

All funds received by the Mississippi Department of Employment Security shall clear through the State Treasury as provided and required by Sections 71-5-111 and 71-5-453. All expenditures from the administration fund of the department authorized by Section 71-5-111 shall be expended only pursuant to appropriation approved by the Legislature and as provided by law.

HISTORY: Laws, 1973, ch. 381, § 3; Laws, 1974, ch. 334; Laws, 1984, ch. 488,

§ 273; Laws, 2004, ch. 572, § 15; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 15; reenacted and amended, Laws, 2010, ch. 559, § 14; reenacted without change, Laws, 2011, ch. 471, § 15; reenacted without change, Laws, 2012, ch. 515, § 15, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 15, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Interest on funds in account of Mississippi Employment Security Commission Fixed Price Contract Account to be retained as part of account used for Job Training Partnership Act programs, see § 7-9-12.

§ 71-5-113. Funds received from the Social Security Board [Repealed effective July 1, 2023].

All monies received from the Social Security Board or its successors for the administration of this chapter shall be expended solely for the purposes and in the amounts found necessary by the Social Security Board or its successors for the proper and efficient administration of this chapter.

It shall be the duty of the department to take appropriate action with respect to the replacement, within a reasonable time, of any monies received from the Social Security Board, or its successors, for the administration of this chapter, and monies used to match grants pursuant to the provisions of the Wagner-Peyser Act, which the board, or its successors, find, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of those found necessary by the Social Security Board, or its successors, for the proper administration of this chapter. Funds which have been expended by the department or its agents in accordance with the budget approved by the Social Security Board, or its successors, or in accordance with the general standards and limitations promulgated by the Social Security Board, or its successors, prior to such expenditure (where proposed expenditures have not been specifically disapproved by the Social Security Board, or its successors), shall not be deemed to require replacement. To effectuate the purposes of this paragraph, it shall be the duty of the department to take such action to safeguard the expenditure of the funds referred to herein as it deems necessary. In the event of a loss of such funds or an improper expenditure thereof as herein defined, it shall be the duty of the department to notify the Governor of any such loss or improper expenditure and submit to him a request for an appropriation in the amount thereof. The Governor shall transmit to the next regular session of the Legislature following such notification, the department's request for an appropriation in an amount necessary to replace funds which have been lost or improperly expended as defined above. Such request of the department for an appropriation shall not be subject to the provisions of Sections 27-103-101 through 27-103-139. The Legislature recognizes its obligation to replace such funds as may be necessary and shall make necessary appropriations in accordance with such requests.

HISTORY: Codes, 1942, § 7422; Laws, 1940, ch. 295, § 11; Laws, 1948, ch. 412, § 8b, c; Laws, 1958, ch. 536, § 2b, c; Laws, 2004, ch. 572, § 16; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 16; reenacted without change, Laws, 2010, ch. 559, § 15; reenacted without change, Laws, 2011, ch. 471, § 16; reenacted without change, Laws, 2012, ch. 515, § 16, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 16, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Use, pursuant to this section, of moneys from special employment security administration fund, see § 71-5-114.

Financing state employment service, see § 71-5-203.

Federal Aspects— Wagner-Peyser Act, see 29 USCS §§ 49 et seq.

§ 71-5-114. Special employment security administration fund [Repealed effective July 1, 2023].

There is created in the State Treasury a special fund, to be known as the "Special Employment Security Administration Fund," into which shall be deposited or transferred all interest, penalties and damages collected on and after July 1, 1982, pursuant to Sections 71-5-363 through 71-5-379 and all interest and penalties required to be deposited into the fund pursuant to Section 71-5-19(4)(b). Interest, penalties and damages collected on delinquent payments deposited during any calendar quarter in the clearing account in the Unemployment Trust Fund shall, as soon as practicable after the close of such calendar quarter, be transferred to the Special Employment Security Administration Fund. All monies in this fund shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Special Employment Security Administration Fund under this chapter. Those monies may be expended for any programs for which the department has administrative responsibility but shall not be expended or made available for expenditure in any manner which would permit their substitution for (or permit a corresponding reduction in) federal funds which would, in the absence of those monies, be available to finance expenditures for the administration of the state unemployment compensation and employment service laws or any other laws directing the administration of any programs for which the department has the administrative responsibility. Nothing in this section shall prevent those monies in this fund from being used as a revolving fund to cover expenditures necessary and proper under the law for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when necessary. The monies in this fund may be used by the department for the payment of costs of administration of the employment security laws of this state which are found not to be or not to have been properly and validly chargeable against funds obtained from federal sources. All monies in this Special Employment Security Administration Fund shall be continuously available to the department for expenditure in accordance with the provisions of this chapter, and shall not lapse at any time. The monies in this fund are specifically made available to replace, as contemplated by Section 71-5-113, expenditures from the Employment Security Administration Fund established by Section 71-5-111, which have been found, because of any action or contingency, to have been lost or improperly expended.

The department, whenever it is of the opinion that the money in the Special Employment Security Administration Fund is more than ample to pay for all foreseeable needs for which such special fund is set up, may, by written order, order the transfer therefrom to the Unemployment Compensation Fund of such amount of money in the Special Employment Security Administration Fund as it deems proper, and the same shall thereupon be immediately transferred to the Unemployment Compensation Fund.

HISTORY: Laws, 1982, ch. 383, § 1; Laws, 2004, ch. 572, § 17; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 17; reenacted without change, Laws, 2010, ch. 559, § 16; reenacted without change, Laws, 2011, ch. 471, § 17; reenacted and amended, Laws, 2012, ch. 515, § 17, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 17, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Unemployment compensation fund, see §§ 71-5-451 et seq.

Transfers from clearing account in unemployment compensation fund to special employment security administration fund, see § 71-5-453.

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation §§ 2, 3.

CJS.

81 C.J.S., Social Security and Public Welfare § 353.

§ 71-5-115. Duties and powers of executive director [Repealed effective July 1, 2023].

It shall be the duty of the executive director to administer this chapter; and the executive director shall have the power and authority to adopt, amend or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this chapter, which the executive director shall prescribe. The executive director shall determine the department's own organization and methods of procedure in accordance with the provisions of this chapter, and shall have an official seal which shall be judicially noticed. Not later than the first day of February in each year, the executive director shall submit to the Governor a report covering the administration and operation of this chapter during the preceding fiscal year and shall make such recommendations for amendments to this chapter as the executive director deems proper. Whenever the executive director believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he shall promptly so inform the Governor and the Legislature, and make recommendations with respect thereto.

HISTORY: Codes, 1942, § 7405; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6a; Laws, 1952, ch. 383, § 4a; Laws, 1958, ch. 533, § 6a; Laws, 1962, ch. 564, § 3a; Laws, 2004, ch. 572, § 18; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 18; reenacted without change, Laws, 2010, ch. 559, § 17; reenacted without change, Laws, 2011, ch. 471, § 18; reenacted without change, Laws, 2012, ch. 515, § 18, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 18, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Cooperation in carrying out provisions regarding job development and training, see § 7-1-365.

Assistance by Employment Security Commission in making relevant information available to Cooperative Extension Service for information clearinghouse assisting farmers, see § 69-2-5.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Rule promulgation authority.

1. In general.

A laid off employee was improperly denied unemployment compensation for the two week period following his receipt of a lump sum vacation payment; pursuant to § 71-5-11(O)(1), which provides in part that an individual is deemed unemployed in any week during which he performs no services, no wages were payable to the employee, in that he had performed no services for his former employer during the two weeks; the vacation pay flowed from services rendered prior to termination of his employment. Further, an administrative rule which provided that pay received after separation from an employer was considered to be "wages," was inconsistent with the legislative definition of "unemployment," and exceeded the powers granted the Commission by this section. Buse v. Mississippi Employment Sec. Com., 377 So. 2d 600, 1979 Miss. LEXIS 2527 (Miss. 1979).

2. Rule promulgation authority.

Award of unemployment benefits to the employee was inappropriate because the employee's failure to attend a hearing was fatal to the employee's appeal from the denial of unemployment benefits. The Mississippi Department of Employment Security (MDES) predicated its dismissal of the employee's claim upon MDES Appeal Regulation 10, and the regulation comported with the authority granted for the promulgation of rules and regulations, Miss. Code Ann. § 71-5-115. Miss. Dep't of

Empl. Sec. v. Johnson, 977 So. 2d 1273, 2008 Miss. App. LEXIS 176 (Miss. Ct. App. 2008).

RESEARCH REFERENCES

Am. Jur.
76 Am. Jur. 2d, Unemployment Compensation §§ 8, 88.

CJS.
81 C.J.S., Social Security and Public Welfare § 471, 472.

§ 71-5-116. Annual report tracking data from contractors to be used to improve workforce training programs.

The Mississippi Department of Employment Security will develop an annual report which tracks data received from contractors. Contractors will cooperate with the Mississippi Department of Employment Security to accumulate relevant data. Collected data and reports are intended solely to allow the Mississippi Department of Employment Security to improve workforce training programs, tailoring trainings to employer needs and hiring trends for in-demand jobs in Mississippi.

HISTORY: Laws, 2012, ch. 505, § 2, eff from and after passage (approved May 1, 2012).

§ 71-5-117. Regulations and general rules [Repealed effective July 1, 2023].

General rules may be adopted, amended or rescinded by the executive director only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten (10) days after filing with the Secretary of State and publication in one or more newspapers of general circulation in this state. Regulations may be adopted, amended or rescinded by the executive director and shall become effective in the manner and at the time prescribed by the executive director.

HISTORY: Codes, 1942, § 7406; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6b; Laws, 1952, ch. 383, § 4b; Laws, 1958, ch. 533, § 6b; Laws, 1962, ch. 564, § 3b; Laws, 2004, ch. 572, § 19; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 19; reenacted without change, Laws, 2010, ch. 559, § 18; reenacted without change, Laws, 2011, ch. 471, § 19; reenacted without change, Laws, 2012, ch. 515, § 19, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 19, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Publication of agreements providing reciprocal treatment to individuals acquiring unemployment compensation rights under this and other systems, see § 71-5-11.

RESEARCH REFERENCES

Am. Jur.
76 Am. Jur. 2d, Unemployment Compensation §§ 8, 88.

CJS.
81 C.J.S., Social Security and Public Welfare § 473.

§ 71-5-119. Publication [Repealed effective July 1, 2023].

The department shall cause to be available for distribution to the public the text of this chapter, its regulations and general rules, its reports to the Governor, and any other material it deems relevant and suitable, and shall furnish the same to any person upon application therefor.

HISTORY: Codes, 1942, § 7407; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6c; Laws, 1952, ch. 383, § 4c; Laws, 1958, ch. 533, § 6c; Laws, 1962, ch. 564, § 3c; Laws, 2004, ch. 572, § 20; Laws, 2007, ch. 606, § 5; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 20; reenacted without change, Laws, 2010, ch. 559, § 19; reenacted without change, Laws, 2011, ch. 471, § 20; reenacted without change, Laws, 2012, ch. 515, § 20, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 20, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

§ 71-5-121. Personnel [Repealed effective July 1, 2023].

Subject to other provisions of this chapter, the executive director is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts and other persons as may be necessary in the performance of department duties; however, all personnel who were former members of the Armed Forces of the United States of America shall be given credit regardless of rate, rank or commission. All positions shall be filled by persons selected and appointed on a nonpartisan merit basis, in accordance with Section 25-9-101 et seq., that provides for a state service personnel system. The executive director shall not employ any person who is an officer or committee member of any political party organization. The executive director may delegate to any such person so appointed such power and authority as he deems reasonable and proper for the effective administration of this chapter, and may in his discretion bond any person handling monies or signing checks hereunder. The veteran status of an individual shall be considered and preference given in accordance with the provisions of the State Personnel Board.

The department and its employees are exempt from Sections 25-15-101 and 25-15-103.

The department may use federal granted funds to provide such group health, life, accident and hospitalization insurance for its employees as may be agreed upon by the department and the federal granting authorities.

The department shall adopt a "layoff formula" to be used wherever it is determined that, because of reduced workload, budget reductions or in order to effect a more economical operation, a reduction in force shall occur in any group.

In establishing this formula, the department shall give effect to the principle of seniority and shall provide that seniority points may be added for disabled veterans and veterans, with due regard to the efficiency of the service. Any such layoff formula shall be implemented according to the policies, rules and regulations of the State Personnel Board.

HISTORY: Codes, 1942, § 7408; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6d; Laws, 1952, ch. 383, § 4d; Laws, 1958, ch. 533, § 6d; Laws, 1962, ch. 564, § 3d; Laws, 1964, ch. 442, § 3; Laws, 1995, ch. 507, § 1; Laws, 2004, ch. 572, § 21; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 21; reenacted without change, Laws, 2010, ch. 559, § 20; reenacted without change, Laws, 2011, ch. 471, § 21; reenacted without change, Laws, 2012, ch. 515, § 21, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 21, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, and as amended by Laws of 2019, ch. 451, § 58, as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

RESEARCH REFERENCES

CJS.

81 C.J.S., Social Security and Public Welfare §§ 467 et seq.

§ 71-5-123. Advisory councils [Repealed effective July 1, 2023].

The executive director shall retain all powers and duties as granted to the state advisory council appointed by the former Employment Security Commission. The executive director may appoint local advisory councils, composed in each case of an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment or affiliations, and of such members representing the general public as the executive director may designate. Such councils shall aid the department in formulating policies and discussing problems related to the administration of this chapter and in assuring impartiality and freedom from political influence in the solution of such problems. Members of the advisory councils shall receive a per diem in accordance with Section 25-3-69 for attendance upon meetings of the council, and shall be reimbursed for actual and necessary traveling expenses. The per diem and expenses herein authorized shall be paid from the Employment Security Administration Fund.

HISTORY: Codes, 1942, § 7409; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6e; Laws, 1952, ch. 383, § 4e; Laws, 1958, ch. 533, § 6e; Laws, 1962, ch. 564, § 3e; Laws, 1989, ch. 320, § 1; Laws, 2004, ch. 572, § 22; reenacted without

change, Laws, 2008, 1st Ex Sess, ch. 30, § 22; reenacted without change, Laws, 2010, ch. 559, § 21; reenacted without change, Laws, 2011, ch. 471, § 22; reenacted without change, Laws, 2012, ch. 515, § 22, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 22, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

RESEARCH REFERENCES

CJS.
81 C.J.S., Social Security and Public Welfare §§ 467 et seq.

§ 71-5-125. Promotion of employment [Repealed effective July 1, 2023].

The department shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise and assist in the establishment and operation, by municipalities, counties, school districts and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigation and research studies.

HISTORY: Codes, 1942, § 7410; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6f; Laws, 1952, ch. 383, § 4f; Laws, 1958, ch. 533, § 6f; Laws, 1962, ch. 564, § 3f; Laws, 2004, ch. 572, § 23; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 23; reenacted without change, Laws, 2010, ch. 559, § 22; reenacted without change, Laws, 2011, ch. 471, § 23; reenacted without change, Laws, 2012, ch. 515, § 23, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 23, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

RESEARCH REFERENCES

Am. Jur.
76 Am. Jur. 2d, Unemployment Compensation §§ 8, 88.

CJS.
81 C.J.S., Social Security and Public Welfare §§ 471, 472.

§ 71-5-127. Records and reports; confidentiality of information [Repealed effective July 1, 2023].

(1) Any information or records concerning an individual or employing unit obtained by the department pursuant to the administration of this chapter or any other federally funded programs for which the department has responsibility shall be private and confidential, except as otherwise provided in this article or by regulation. Information or records may be released by the department when the release is required by the federal government in connection with, or as a condition of funding for, a program being administered by the department.

(2) Each employing unit shall keep true and accurate work records, containing such information as the department may prescribe. Such records shall be open to inspection and be subject to being copied by the department or its authorized representatives at any reasonable time and as often as may be necessary. The department, Board of Review and any referee may require from any employing unit any sworn or unsworn reports with respect to persons employed by it which they or any of them deem necessary for the effective administration of this chapter. Information, statements, transcriptions of proceedings, transcriptions of recordings, electronic recordings, letters, memoranda, and other documents and reports thus obtained or obtained from any individual pursuant to the administration of this chapter shall, except to the extent necessary for the proper administration of this chapter, be held confidential and shall not be published or be opened to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the individual's or employing unit's identity.

(3) Any claimant or his legal representative at a hearing before an appeal tribunal or the Board of Review shall be supplied with information from such records to the extent necessary for the proper presentation of his claim in any proceeding pursuant to this chapter.

(4) Any employee or member of the Board of Review or any employee of the department who violates any provisions of this section shall be fined not less than Twenty Dollars ($20.00) nor more than Two Hundred Dollars ($200.00), or imprisoned for not longer than ninety (90) days, or both.

(5) The department may make the state's records relating to the administration of this chapter available to the Railroad Retirement Board, and may furnish the Railroad Retirement Board, at the expense of such board, such copies thereof as the Railroad Retirement Board deems necessary for its purposes. The department may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

HISTORY: Codes, 1942, § 7411; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6g(1); Laws, 1952, ch. 383, § 4g(1); Laws, 1958, ch. 533, § 6g(1); Laws, 1962, ch. 564, § 3g(1); Laws, 2004, ch. 572, § 24; Laws, 2007, ch. 606, § 6; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 24; reenacted without change, Laws, 2010, ch. 559, § 23; reenacted without change, Laws, 2011, ch.

471, § 24; reenacted without change, Laws, 2012, ch. 515, § 24, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 24, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

JUDICIAL DECISIONS

1. In general.

The statute [Code 1942, § 7411] only confers confidentiality which bans publication or opening of records "to public inspection;" subpoena-compelled availability of such records in defense of a claim made for a beneficiary of the Act is not expressly covered and should not be implied to bar access to facts relevant to the issues raised by a back pay claim before the NLRB. Marine Welding & Repair Works, Inc. v. NLRB, 492 F.2d 526, 1974 U.S. App. LEXIS 9173 (5th Cir. 1974).

The Mississippi employment security provision, requiring each employing unit to keep work records but providing that information thus obtained be held confidential and not published or opened to public inspection, did not create an absolute privilege prohibiting the commission manager from disclosing, in a federal civil rights suit against an employer, the information contained in commission records, and an order of the federal district court requiring the manager to produce such records would afford the manager complete protection from prosecution for the violation of the Mississippi prohibition against publication of the information. Fears v. Burris Mfg. Co., 436 F.2d 1357, 1971 U.S. App. LEXIS 12291 (5th Cir. Miss. 1971).

The potential harm from disclosure of any employment security commission records subject to a privilege must be weighed against the benefits of such disclosure, and in the case of charges of racial discrimination in employment and in handling job applications and referrals, the value of disclosure outweighed the possible side effects of such disclosure. Carr v. Monroe Mfg. Co., 431 F.2d 384, 1970 U.S. App. LEXIS 7660 (5th Cir. Miss. 1970), cert. denied, 400 U.S. 1000, 91 S. Ct. 456, 27 L. Ed. 2d 451, 1971 U.S. LEXIS 3560 (U.S. 1971).

Although denying the employment security commission's request that it be allowed to place tape on application cards over the names of all applicants referred to the corporation defendant except the named plaintiffs and of all employers except the corporate defendant to whom referrals were made, the district court property ordered extensive protective devices to assure that neither the original records nor copies would reach any nonparty, and that the parties and their counsel would use the records only for purposes of the instant litigation. Carr v. Monroe Mfg. Co., 431 F.2d 384, 1970 U.S. App. LEXIS 7660 (5th Cir. Miss. 1970), cert. denied, 400 U.S. 1000, 91 S. Ct. 456, 27 L. Ed. 2d 451, 1971 U.S. LEXIS 3560 (U.S. 1971).

In a case against an individual employer and the state employment security commission charging, respectively, racial discrimination in employment and in handling job applications and referrals, discovery was properly granted as to certain employment security commission records, including the application cards of all those referred to the corporate defendant. Carr v. Monroe Mfg. Co., 431 F.2d 384, 1970 U.S. App. LEXIS 7660 (5th Cir. Miss. 1970), cert. denied, 400 U.S. 1000, 91 S. Ct. 456, 27 L. Ed. 2d 451, 1971 U.S. LEXIS 3560 (U.S. 1971).

OPINIONS OF THE ATTORNEY GENERAL

The Mississippi Department of Employment Security's alien labor program is exempt from the Mississippi Public Records Act, and thus, confidential in regards to requests made by third-party advocacy groups. Fitch, Nov. 18, 2005, A.G. Op. 05-0499.

RESEARCH REFERENCES

CJS.

81 C.J.S., Social Security and Public Welfare §§ 471, 472.

§ 71-5-129. Destruction of useless records [Repealed effective July 1, 2023].

Records hereinafter designated, which are found by the department to be useless, may be disposed of in accordance with approved records control schedules.

(a) Records which have been preserved by it for not less than three (3) years:

(1) Initial claims for benefits,

(2) Continued claims for benefits,

(3) Correspondence and master index cards in connection with such claims for benefits, and

(4) Individual wage slips filed by employers subject to the provisions of the Unemployment Compensation Law.

(b) Records which have been preserved by it for not less than six (6) months after becoming inactive:

(1) Work applications,

(2) Cross-index cards for work applications,

(3) Test records,

(4) Employer records,

(5) Work orders,

(6) Clearance records,

(7) Counseling records,

(8) Farm placement records, and

(9) Correspondence relating to all such records.

Nothing herein contained shall be construed as authorizing the destruction or disposal of basic fiscal records reflecting the financial operations of the department and no records may be destroyed without the approval of the Director of the Department of Archives and History.

HISTORY: Codes, 1942, §§ 7411-01, 7411-02, 7411-03; Laws, 1944, ch. 290, § 1; Laws, 1950, ch. 418; Laws, 1952, ch. 390; Laws, 1970, ch. 504, § 1; Laws, 1981, ch. 501, § 25; Laws, 1987, ch. 318; Laws, 2004, ch. 572, § 25; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 25; reenacted without change, Laws, 2010, ch. 559, § 24; reenacted without change, Laws, 2011, ch. 471, § 25; reenacted without change, Laws, 2012, ch. 515, § 25, eff from and after July 1,

2012; reenacted without change, Laws, 2019, ch. 451, § 25, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — For requirement that consent of Director of Department of Archives and History be obtained prior to destruction of public records, see §§ 25-59-21, 25-59-31.

Archives and Records Management Law generally, see §§ 25-59-21 et seq.

§ 71-5-131. Privileged communications [Repealed effective July 1, 2023].

All letters, reports, communications, or any other matters, either oral or written, from the employer or employee to each other or to the department or any of its agents, representatives or employees, which shall have been written, sent, delivered or made in connection with the requirements and administration of this chapter shall be absolutely privileged and shall not be made the subject matter or basis of any suit for slander or libel in any court of the State of Mississippi unless the same be false in fact and maliciously written, sent, delivered or made for the purpose of causing a denial of benefits under this chapter.

HISTORY: Codes, 1942, § 7412; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6g(2); Laws, 1952, ch. 383, § 4g(2); Laws, 1958, ch. 533, § 6g(2); Laws, 1962, ch. 564, § 3g(2); Laws, 2004, ch. 572, § 26; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 26; reenacted without change, Laws, 2010, ch. 559, § 250; reenacted without change, Laws, 2011, ch. 471, § 26; reenacted without change, Laws, 2012, ch. 515, § 26, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 26, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Actionable words, see § 95-1-1.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Illustrative cases.

1. In general.

Former employee's defamation claim against his former co-worker was properly dismissed on summary judgment because the co-worker enjoyed an absolute privilege for her statement, made during a Mississippi Employment Security Commission hearing. Raiola v. Chevron U.S.A., Inc., 872 So. 2d 79, 2004 Miss. App. LEXIS 127 (Miss. Ct. App. 2004).

An employee failed to prove that statements made by his employer to the Mississippi Employment Security Commission were false or maliciously made, and therefore the statements maintained their privileged status and could not be the basis for a libel or slander suit, where the employee's only evidence was his allegation that his employer defamed him by stating that he was fired for a "bad attitude" and his testimony at trial that the employer's contention that he was insubordinate was false. McArn v. Allied Bruce-Terminix Co., 626 So. 2d 603, 1993 Miss. LEXIS 326 (Miss. 1993).

Statement by assistant manager of store that plaintiff and two others trifled with store's money with ill intent was not privileged under this section [Code 1942, § 7412], as alleged accusation was not made in connection with requirements and administration of unemployment compensation law nor were they made for purpose of causing denial of benefits under the law. Montgomery Ward & Co. v. Harland, 205 Miss. 380, 38 So. 2d 771, 1949 Miss. LEXIS 436 (Miss. 1949).

2. Illustrative cases.

Employer's statements to the Mississippi Employment Security Commission about a discharged employee were privileged under Miss. Code Ann. § 71-5-131 because there was no evidence that the employer acted falsely or maliciously in stating that the employee was discharged because he had falsified documents. McGinty v. Acuity Speciality Prods. Group, 2009 U.S. Dist. LEXIS 4957 (S.D. Miss. Jan. 22, 2009).

RESEARCH REFERENCES

ALR.

Right of one against whom testimony is offered to invoke privilege of communication between others. 2 A.L.R.2d 645.

Am. Jur.

50 Am. Jur. 2d, Libel and Slander §§ 255 et seq.

5 Am. Jur. Proof of Facts 3d, Defamation by Employer, §§ 1 et seq.

CJS.

53 C.J.S., Libel and Slander Injurious Falsehood §§ 104 et seq.

§ 71-5-133. Failure to produce records [Repealed effective July 1, 2023].

In any case where an employing unit or any officer, member or agent thereof, or any other person having possession of the records thereof, shall fail or refuse upon demand by the department or its duly appointed agents to produce or permit the examination or copying of any book, paper, account, record or other data pertaining to payrolls or employment or ownership of interests or stock in any employing unit, or bearing upon the correctness of any report, or for the purpose of making a report as required by this chapter where none has been made, then and in that event the department or its duly authorized agents may, by the issuance of a subpoena, require the attendance of such employing unit or any officer, member or agent thereof, or any other person having possession of the records thereof, and take testimony with respect to any such matter and may require any such person to produce any books or records specified in such subpoena. The department or its authorized agents at any such hearing shall have power to administer oaths to any such person or persons. When any person called as a witness by a subpoena signed by the department or its agents and served upon him by the sheriff of a county of which such person is a resident, or wherein is located the principal office of such employing unit or wherein such records are located or kept, shall fail to obey such subpoena to appear before the department or its authorized agent, or shall refuse to testify or to answer any questions or to produce any book, record, paper or other data when required to do so, such failure or refusal shall be reported to the Attorney General, who shall thereupon institute proceedings by the filing of a petition in the name of the State of Mississippi, on the relation of the department, in the circuit court or other court of competent jurisdiction of the county where such witness resides, or wherein such records are located or kept, to compel the obedience of such witness. Such petition shall set forth the facts and circumstances of the demand for and refusal or failure to permit the examination or copying of such records, or the failure or refusal of such witness to testify in answer to such subpoena or to produce the records so required by such subpoena. Such court, upon the filing and docketing of such petition, shall thereupon promptly issue an order to the defendants named in the petition to produce forthwith in such court, or at a place in such county designated in such order for the examination or copying by the department or its duly appointed agents, the records, books or documents so described, and to testify concerning matters described in such petition. Unless such defendants to such petition shall appear in the court upon a day specified in such order, which day shall be not more than ten (10) days after the date of issuance of such order, and offer, under oath, good and sufficient reasons why such examination or copying should not be permitted, or why such subpoena should not be obeyed, such court shall thereupon deliver to the department or its agents, for examination or copying, the records, books and documents so described in the petition and so produced in such court, and shall order the defendants to appear in answer to the subpoena of the department or its agents, and to testify concerning matters inquired about by the department. Any employing unit or any officer, member or agent thereof, or any other person having possession of the records thereof, who shall willfully disobey such order of the court after the same shall have been served upon him shall be guilty of indirect contempt of such court from which such order shall have issued, and may be adjudged in contempt of the court and punished therefor as provided by law.

HISTORY: Codes, 1942, § 7413; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6h; Laws, 1952, ch. 383, § 4h; Laws, 1958, ch. 533, § 6h; Laws, 1962, ch. 564, § 3h; Laws, 2004, ch. 572, § 27; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 27; reenacted without change, Laws, 2010, ch. 559, § 26; reenacted without change, Laws, 2011, ch. 471, § 27; reenacted without change, Laws, 2012, ch. 515, § 27, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 27, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Power of courts to punish contempt, see § 9-1-17.

Subpoenas for witnesses, see § 13-3-93.

§ 71-5-135. Failure to make reports [Repealed effective July 1, 2023].

If any employing unit fails to make any report required by this chapter, the department or its authorized agents shall give notice to such employing unit to make and file such report within fifteen (15) days from the date of such notice. If such employing unit, by its proper members, officers or agents, shall fail or refuse to make and file such reports within such time, then and in that event such report shall be made by the department or its authorized agents from the best information available, and the amount of contributions due shall be computed thereon; and such report shall be prima facie correct for the purposes of this chapter.

HISTORY: Codes, 1942, § 7414; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6i; Laws, 1952, ch. 383, § 4i; Laws, 1958, ch. 533, § 6i; Laws, 1962, ch. 564, § 3i; Laws, 1992, ch. 362, § 1; Laws, 2004, ch. 572, § 28; Laws, 2007, ch. 606, § 7; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 28; reenacted without change, Laws, 2010, ch. 559, § 27; reenacted without change, Laws, 2011, ch. 471, § 28; reenacted without change, Laws, 2012, ch. 515, § 28, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 28, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

§ 71-5-137. Oaths and witnesses [Repealed effective July 1, 2023].

In the discharge of the duties imposed by this chapter, the department, any referee, the members of the Board of Review, and any duly authorized representative of any of them shall have power to administer oaths and affirmations, to take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

HISTORY: Codes, 1942, § 7415; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6j; Laws, 1952, ch. 383, § 4j; Laws, 1958, ch. 533, § 6j; Laws, 1962, ch. 564, § 3j; Laws, 2004, ch. 572, § 29; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 29; reenacted without change, Laws, 2010, ch. 559, § 28; reenacted without change, Laws, 2011, ch. 471, § 29, Laws, 2012, ch. 515, § 29, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 29, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Issuance of subpoenas for witnesses, see § 13-3-93.

JUDICIAL DECISIONS

1. In general.

Power of commission and board of review to issue writs of duces tecum is subject to discretion of the court, as against contention that the commission and board have exclusive power to issue writs of duces tecum and that the only function of the court is to enforce production if the board and commission should determine that such production should be had. Board of Review v. Williams, 195 Miss. 618, 15 So. 2d 48, 1943 Miss. LEXIS 138 (Miss. 1943).

In proceeding by board of review for an order requiring individual to produce stock books and payrolls of a corporation for inspection and evidence if desired in connection with a claim for compensation, chancellor did not err in refusing order for production where record showed that employee was employed by individual as a farm laborer and, therefore, not entitled to benefits under the statute evidence of the stockholders and employees of the corporation in such case being irrelevant. Board of Review v. Williams, 195 Miss. 618, 15 So. 2d 48, 1943 Miss. LEXIS 138 (Miss. 1943).

In proceeding by board of review for order compelling an individual to produce stock books and payrolls of corporation, wherein chancellor refused order and issued restraining order against enforcement of duces tecum writ issued by commission, restraining order properly applied against commission as against contention that commission was not a party to the proceeding, since under the statute and also under the facts of the case, the commission was so connected with the board of review that the restraining order could issue against it as a matter of proper procedure. Board of Review v. Williams, 195 Miss. 618, 15 So. 2d 48, 1943 Miss. LEXIS 138 (Miss. 1943).

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation § 88.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 471, 472.

§ 71-5-139. Subpoenas [Repealed effective July 1, 2023].

In case of contumacy or refusal to obey a subpoena issued to any person, any court in this state within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the department, the Board of Review, any referee, or any duly authorized representative of any of them, shall have jurisdiction to issue to such person an order requiring such person to appear before the department, the Board of Review, any referee, or any duly authorized representative of any of them, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda and other records if it is in his power so to do, in obedience to a subpoena of the department, the Board of Review, any referee, or any duly authorized representative of any of them, shall be punished by a fine of not more than Two

Hundred Dollars ($200.00), or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment; and each day such violation continues shall be deemed to be a separate offense.

HISTORY: Codes, 1942, § 7416; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6k; Laws, 1952, ch. 383, § 4k; Laws, 1958, ch. 533, § 6k; Laws, 1962, ch. 564, § 3k; Laws, 2004, ch. 572, § 30; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 30; reenacted without change, Laws, 2010, ch. 559, § 29; reenacted without change, Laws, 2011, ch. 471, § 30; reenacted without change, Laws, 2012, ch. 515, § 30, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 30, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Order to produce books and papers, see § 11-1-51.

Attachment for witness, see § 13-3-103.

JUDICIAL DECISIONS

1. In general.

Power of commission and board of review to issue writs of duces tecum is subject to discretion of the court, as against contention that the commission and board have exclusive power to issue writs of duces tecum and that the only function of the court is to enforce production if the board and commission should determine that such production should be had. Board of Review v. Williams, 195 Miss. 618, 15 So. 2d 48, 1943 Miss. LEXIS 138 (Miss. 1943).

In proceeding by board of review for an order requiring individual to produce stock books and payrolls of a corporation for inspection and evidence if desired in connection with a claim for compensation, chancellor did not err in refusing order for production where record showed that employee was employed by individual as a farm laborer and, therefore, not entitled to benefits under the statute, evidence of the stockholders and employees of the corporation in such case being irrelevant. Board of Review v. Williams, 195 Miss. 618, 15 So. 2d 48, 1943 Miss. LEXIS 138 (Miss. 1943).

In proceeding by board of review for order compelling an individual to produce stock books and payrolls of corporation, wherein chancellor refused order and issued restraining order against enforcement of duces tecum writ issued by commission, restraining order properly applied against commission as against contention that commission was not a party to the proceeding, since under the statute and also under the facts of the case, the commission was so connected with the board of review that the restraining order could issue against it as a matter of proper procedure. Board of Review v. Williams, 195 Miss. 618, 15 So. 2d 48, 1943 Miss. LEXIS 138 (Miss. 1943).

§ 71-5-141. Protection against self-incrimination [Repealed effective July 1, 2023].

No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and other records before the department, the Board of Review, any referee, or any duly authorized representative of any of them, or in obedience to the subpoena of any of them in any cause or proceeding before the department, the Board of Review or an appeal tribunal, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

HISTORY: Codes, 1942, § 7417; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6l; Laws, 1952, ch. 383, § 4l; Laws, 1958, ch. 533, § 6l; Laws, 1962, ch. 564, § 3l; Laws, 2004, ch. 572, § 31; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 31; reenacted without change, Laws, 2010, ch. 559, § 30; reenacted without change, Laws, 2011, ch. 471, § 31; reenacted without change, Laws, 2012, ch. 515, § 31, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 31, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Constitutional authority for privilege against self-incrimination, see Miss Const Art. 3, § 26.

JUDICIAL DECISIONS

1. In general.

Although Miss. Code Ann. § 71-5-19(4) clearly gave the Mississippi Employment Security Commission (MESC) the right to seek full repayment and there was not a requirement of any fraudulent intent in order to do so, the MESC's decision to seek full repayment of unemployment benefits was arbitrary and capricious, because the claimant's failure to testify did not amount to fraud. Miss. Empl. Sec. Comm'n v. Jones, 826 So. 2d 77, 2002 Miss. LEXIS 284 (Miss. 2002).

RESEARCH REFERENCES

Lawyers' Edition.

Adequacy, under Federal Constitution, of immunity granted in lieu of privilege against self-incrimination-supreme court cases. 32 L. Ed. 2d 869.

§ 71-5-143. State-federal cooperation [Repealed effective July 1, 2023].

In the administration of this chapter, the department shall cooperate, to the fullest extent consistent with the provisions of this chapter, with the Social Security Board created by the Social Security Act, approved August 14, 1935, as amended; shall make such reports in such form and containing such information as the Social Security Board may from time to time require, and shall comply with such provisions as the Social Security Board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the reasonable, valid and lawful regulations prescribed by the Social Security Board pursuant to and under the authority of the Social Security Act, governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act, as amended, for the purpose of assisting in the administration of this chapter.

Upon request therefor, the department shall furnish to any agency of the United States charged with the administration of public works, or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of benefits, and such recipient's rights to further benefits under this chapter.

HISTORY: Codes, 1942, § 7418; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6m; Laws, 1952, ch. 383, § 4m; Laws, 1958, ch. 533, § 6m; Laws, 1962, ch. 564, § 3m; Laws, 2004, ch. 572, § 32; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 32; reenacted without change, Laws, 2010, ch. 559, § 31; reenacted without change, Laws, 2011, ch. 471, § 32; reenacted without change, Laws, 2012, ch. 515, § 32, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 32, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Federal Aspects— Title III of the Social Security Act, see 42 USCS §§ 501 et seq.

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation § 1.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 283, 284, 286.

§ 71-5-145. 1235 Echelon Parkway named the Henry J. Kirksey Building.

The building located at 1235 Echelon Parkway in Jackson, Mississippi, and in which the Mississippi Department of Employment Security is housed, shall be named the Henry J. Kirksey Building. The Department of Finance and Administration shall prepare a distinctive plaque, to be placed in a prominent place within the Henry J. Kirksey Building, which states the background, accomplishments and service to the state of the Honorable Henry J. Kirksey.

HISTORY: Laws, 2007, ch. 339, § 2, eff from and after passage (approved Mar. 14, 2007).

ARTICLE 5.

EMPLOYMENT SERVICE.

Sec.
71-5-201. State employment service [Repealed effective July 1, 2023].

Sec.
71-5-203. Financing.

§ 71-5-201. State employment service [Repealed effective July 1, 2023].

The Mississippi State Employment Service is established in the Mississippi Department of Employment Security, Office of the Governor. The department, in the conduct of such service, shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this article and for the purpose of performing such functions as are within the purview of the act of Congress entitled "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes" (29 USCS Section 49 et seq.). Any existing free public employment offices maintained by the state but not heretofore under the jurisdiction of the department shall be transferred to the jurisdiction of the department, and upon such transfer all duties and powers conferred upon any other department, agency or officers of this state relating to the establishment, maintenance and operation of free public employment offices shall be vested in the department. The Mississippi State Employment Service shall be administered by the department, which is charged with the duty to cooperate with any official or agency of the United States having powers or duties under the provisions of the act of Congress, as amended, and to do and perform all things necessary to secure to this state the benefits of that act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of that act of Congress, as amended, are accepted by this state, in conformity with 29 USCS Section 49c, and this state will observe and comply with the requirements thereof. The department is designated and constituted the agency of this state for the purposes of that act. The department may cooperate with or enter into agreements with the Railroad Retirement Board or veteran's organization with respect to the establishment, maintenance and use of free employment service facilities.

HISTORY: Codes, 1942, § 7419; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 3; Laws, 1948, ch. 412, § 7a; Laws, 1971, ch. 519, § 12; Laws, 1972, ch. 425, § 1; Laws, 2004, ch. 572, § 33; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 33; reenacted without change, Laws, 2010, ch. 559, § 32; reenacted without change, Laws, 2011, ch. 471, § 33; reenacted without change, Laws, 2012, ch. 515, § 33, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 33, eff from and after April 3, 2019.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference. The reference to "Section 29 U.S.C.S. Section 49c" was changed to "29 U.S.C.S. Section 49c." The Joint Committee ratified the correction at its May 20, 1998, meeting.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of

2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Statutory regulation of employment generally, see §§ 71-1-17 et seq.

Employment practices of public service corporations, see §§ 77-9-725 et seq.

Federal Aspects — Wagner-Peyser Act, see 29 USCS §§ 49 et seq.

RESEARCH REFERENCES

Am. Jur.

27 Am. Jur. 2d, Employment Agencies § 27.

§ 71-5-203. Financing.

All moneys received by this state under the said act of Congress, as amended, shall be paid into the employment security administration fund. Said moneys are hereby made available to the commission to be expended as provided by this article and by said act of Congress, upon voucher signed by the executive director or such other officer or employee of the commission as it may authorize so to do. For the purpose of establishing and maintaining free public employment offices, the commission is authorized to enter into agreements with the railroad retirement board or any other agency of the United States charged with the administration of an unemployment compensation law, with any political subdivision of this state, or with any private, non-profit organization; and as a part of any such agreement, the commission may accept moneys, services, or quarters as a contribution to the employment security administration fund.

HISTORY: Codes, 1942, § 7420; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 3; Laws, 1948, ch. 412, § 7b, eff July 1, 1948.

Cross References — Funds for administration, see §§ 71-5-111, 71-5-113.

Federal Aspects— Wagner-Peyser Act, see 29 USCS §§ 49 et seq.

RESEARCH REFERENCES

Am. Jur.

27 Am. Jur. 2d, Employment Agencies §§ 26 et seq.

ARTICLE 7.

CONTRIBUTIONS.

Sec.	
71-5-351.	Payment of contributions; participation in the Mississippi Level Payment Plan (MLPP).
71-5-353.	Rate of contributions; reduction in contribution rate for certain employers; distribution of contributions; suspension of Workforce Enhancement Training contributions under certain circumstances.
71-5-355.	Modified rates.

Sec.
71-5-357. Regulations governing nonprofit organizations [Repealed effective July 1, 2023].
71-5-359. Regulations governing state boards, instrumentalities, and political subdivisions [Repealed effective July 1, 2023].
71-5-361. Period, election, and termination.
71-5-363. Interest on past due contributions; abatement of interest accrued on past-due contributions under certain circumstances.
71-5-365. Failure to make reports and pay contributions.
71-5-367. Collection by warrant.
71-5-369. Jeopardy assessment and warrant.
71-5-371. Liability of sheriff for failure to execute warrant.
71-5-373. Defaulting employer.
71-5-375. Contributions a lien.
71-5-377. Priorities under legal dissolutions or distributions.
71-5-379. Collection by suit.
71-5-381. No injunction allowed to restrain collection.
71-5-383. Refunds.
71-5-385. Requesting permission to file reports in special format; regulations; penalty.
71-5-387. Contributions to the unemployment compensation fund by certain Indian tribes under Federal Unemployment Tax Act.
71-5-389. Setoff against tax refunds for debts owed to Mississippi Department of Employment Security; submission of debts to Department of Revenue; notice to debtor; transfer of funds to Department of Revenue; hearings; appeals; confidentiality.
71-5-391. Use of administrative funds for payment of fees associated with receipt of electronic payments.

§ 71-5-351. Payment of contributions; participation in the Mississippi Level Payment Plan (MLPP).

(1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter. Such contributions shall become due and be paid by each employer to the department for the fund each calendar quarter on or before the last day of the month next succeeding each calendar quarter in which the contributions accrue unless the employer has filed an election with the department to participate in the Mississippi Level Payment Plan (MLPP) and complies with the provision of the MLPP. The department may extend the due date of such contributions if the due date falls on a Saturday, Sunday or state or federal holiday. Such contributions shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ.

(2)(a) Any employer who is a newly subject employer or any employer who meets the requirements of participation in the MLPP shall be allowed one (1) participation election per year. The department may by regulation establish exceptions to this rule as appropriate. The department shall establish by regulation the requirements for computation and adjustment of compensation and shall compute the amount of payments that will be made quarterly and notify each employer before the first tax payment is due for the year. Equal payments will be made for calendar quarters ending March, June and

September and settlement will be made for any overage or shortage at the time payment is due for the December quarter.

(b) An employer who meets the following criteria may participate in the MLPP:

(i) The employer has not been delinquent in filing unemployment reports or paying unemployment taxes to the department during the last two (2) calendar years and must make current all other delinquent unemployment taxes and reports;

(ii) The employer has been an employer subject to the unemployment laws of the State of Mississippi, or in accordance with department regulations regarding MLPP, for at least twelve (12) months prior to the year the employer starts participating;

(iii) The employer must agree to file reports through the department's online system or other agency prescribed electronic facility and pay electronically;

(iv) The employer remains current in filing and paying taxes; and

(v) The employer must make the election by April 1 of the year.

(c) Employers who participate in the MLPP and pay their contribution by bank draft shall utilize the pay schedule provided for in this paragraph. The pay schedule shall be as follows:

(i) January to March due date May 15;

(ii) April to June due date August 15;

(iii) July to September due date November 15; and

(iv) October to December due date January 31.

(d) In the event the computed Size of Fund Index (SOFI) for any rate year computation falls below one percent (1.0%), the additional fifteen (15) days' delay provided for bank draft customers will be suspended for that year.

(3) For purposes of payment of contributions on remuneration paid to individuals, if two (2) or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual such amounts actually disbursed to such individual by another of such corporations.

In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to One-half Cent (½¢) or more, in which case it shall be increased to One Cent (1¢).

(4) For the purposes of this section and Sections 71-5-353, 71-5-357 and 71-5-359, taxable wages shall not include that part of remuneration which, after remuneration equal to Seven Thousand Dollars ($7,000.00) through December 31, 2010, and Fourteen Thousand Dollars ($14,000.00) thereafter, has been paid in a calendar year to an individual by an employer or his predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part

of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state employment fund. For the purposes of this section, the term "employment" shall include service constituting employment under any unemployment compensation law of another state.

(5) Absent evidence of willful or fraudulent attempt to avoid taxation, the effective date of liability of an employer or assessment of liability for covered employment against an employer shall not occur for any period preceding the three (3) calendar years before the date of registration or assessment, unless said three-year limitations period is waived by the employer.

(6) The executive director may grant a reasonable extension of time beyond the statutory due date within which to file any report required by this section to an employer located in an area included in a declaration of an emergency or disaster by the President or the Governor. The executive director may, in his discretion, recognize extensions of time authorized and granted by the Internal Revenue Service for the filing of tax returns.

HISTORY: Codes, 1942, § 7390; Laws, 1940, ch. 295, § 5; Laws, 1948, ch. 412, § 4a; Laws, 1950, ch. 454, § 1a; Laws, 1952, ch. 383, § 2a; Laws, 1956, ch. 404, § 2a; Laws, 1958, ch. 533, § 5a; Laws, 1962, ch. 564, § 2a; Laws, 1964, ch. 442, § 2a; Laws, 1971, ch. 519, § 6; Laws, 1977, ch. 497, § 2; Laws, 1983, ch. 371, § 2; Laws, 1985, ch. 413; Laws, 1998, ch. 331, § 2; Laws, 2001, ch. 431, § 1; Laws, 2005, ch. 437, § 4; Laws, 2010, ch. 504, § 1; Laws, 2013, ch. 309, § 5, eff from and after passage (approved March 6, 2013).

Editor's Notes — Laws of 1977, ch. 497, § 10, provides:

"SECTION 10. In the event the provisions of P.L. 94-566, the Unemployment Compensation Amendments of 1976, which mandate unemployment insurance coverage for state and local government employees, are declared unconstitutional, the amendments, which mandate unemployment insurance coverage for state and local government employees, adopted to Sections 71-5-11, 71-5-351, 71-5-355, 71-5-357, 71-5-359, 71-5-361, 71-5-511, 71-5-513 and 71-5-541, Mississippi Code of 1972, at the 1977 Regular Session of the Legislature shall stand repealed."

Cross References — Definition of "payroll" as related to "wages," see § 71-5-355.

Regulations governing payment of benefits to employees of nonprofit organizations, see § 71-5-357.

Provisions relative to the obligations of state boards, state agencies, and political subdivisions under the Mississippi Unemployment Compensation Law, see § 71-5-359.

JUDICIAL DECISIONS

1. In general.

An unemployment compensation claimant was not entitled to benefits since excessive garnishments upon his wages constituted "misconduct" connected with his work under § 71-5-513(A)(2), in accordance with the public policy stated in § 71-5-3, the implementation of which is accomplished through contributions of all covered employers into the state employment fund pursuant to §§ Mississippi Employment Sec. Com. v. Borden, Inc., 451 So. 2d 222, 1984 Miss. LEXIS 1787 (Miss. 1984).

Where a worker was employed by two separate employers, a contributing employer within the meaning of § 71-5-351, and a reimbursing employer within the meaning of § 71-5-357, the reimbursing employer, a school district, was required to reimburse the state for a pro rata share of benefits paid under § 71-5-357(c)(i), even though it continued to employ the worker on a part-time basis. McLaurin v. Mississippi Employment Sec. Com., 435 So. 2d 1170, 1983 Miss. LEXIS 2781 (Miss. 1983).

The exemption of credit unions paying a privilege tax from all other taxation does not embrace contributions to the unemployment insurance fund. Mutual Credit Union v. Mississippi Employment Sec. Com., 241 Miss. 432, 131 So. 2d 444, 1961 Miss. LEXIS 363 (Miss. 1961).

A relationship of master and servant existed and the plumbing company was liable for state unemployment taxes where it engaged a laborer to unload cars, this unloading of cars was part of the company's regular business, the laborer worked at the job at regular intervals, the company had the right to control the laborer, the company had employed such laborer for at least part of a day in each of twenty different weeks during the year, and had also employed seven other regular employees during the year. Mississippi Employment Sec. Com. v. Plumbing Wholesale Co., 219 Miss. 724, 69 So. 2d 814, 1954 Miss. LEXIS 379 (Miss. 1954).

The legislative intent of the test for the employer-employee relationship under this statute is obtained by an application of the principles of the common law of master and servant. Mississippi Employment Sec. Com. v. Heidelberg Hotel Co., 211 Miss. 104, 51 So. 2d 47, 1951 Miss. LEXIS 337 (Miss. 1951).

Where a hotel hired an orchestra under a contract which designated the hotel as an employer and the musicians as employees, but the hotel exercises no control over the operation of the orchestra, the musicians were not employees of the hotel and the hotel was not liable for the state unemployment taxes. Mississippi Employment Sec. Com. v. Heidelberg Hotel Co., 211 Miss. 104, 51 So. 2d 47, 1951 Miss. LEXIS 337 (Miss. 1951).

RESEARCH REFERENCES

ALR.

Service charges, by hotels or restaurants and later distributed to employees, as "wages" upon which federal or state unemployment taxes or contributions are required to be paid. 83 A.L.R.2d 1024.

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation §§ 15 et seq., 18 et seq.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 284, 287.

§ 71-5-353. Rate of contributions; reduction in contribution rate for certain employers; distribution of contributions; suspension of Workforce Enhancement Training contributions under certain circumstances.

(1)(a) Each employer shall pay unemployment insurance contributions equal to five and four-tenths percent (5.4%) of taxable wages paid by him each calendar year, except as may be otherwise provided in Section 71-5-361 and except that each newly subject employer shall pay unemployment insurance contributions at the rate of one percent (1%) of taxable wages, for his first year of liability, one and one-tenth percent (1.1%) of taxable wages for his second year of liability, and one and two-tenths percent (1.2%) of taxable wages for his third and subsequent years of liability unless the employer's experience-rating record has been chargeable throughout at least the twelve (12) consecutive calendar months ending on the most recent computation date at the time the rate for a year is determined; thereafter the employer's contribution rate shall be determined in accordance with the provisions of Section 71-5-355.

(b) Notwithstanding the newly subject employer contribution rate provided for in paragraph (a) of this subsection, the contribution rate of all newly subject employers shall be reduced by seven one-hundredths of one percent (.07%) for calendar year 2013 only. The contribution rate of all newly subject employers shall be reduced by three one-hundredths of one percent (.03%) for calendar year 2014 only. For purposes of this chapter, "newly subject employers" means employers whose unemployment insurance experience-rating record has not been chargeable throughout at least the twelve (12) consecutive calendar months ending on the most recent computation date at the time the contribution rate for a year is determined.

(2)(a)(i) There is hereby created in the Treasury of the State of Mississippi special funds to be known as the "Mississippi Workforce Enhancement Training Fund" and the "Mississippi Works Fund" which consist of funds collected pursuant to subsection (3) of this section.

(ii) Funds collected shall initially be deposited into the Mississippi Department of Employment Security bank account for clearing contribution collections and subsequently appropriate amounts shall be transferred to the Mississippi Workforce Investment and Training Fund Holding Account described in Section 71-5-453. In the event any employer pays an amount insufficient to cover the total contributions due, the amounts due shall be satisfied in the following order:

1. Unemployment contributions;
2. Mississippi Workforce Enhancement Training contributions, State Workforce Investment contributions and the Mississippi Works contributions, known collectively as the Mississippi Workforce Investment and Training contributions, on a pro rata basis;
3. Interest and damages; then
4. Legal and processing costs.

The amount of unemployment insurance contributions due for any period will be the amount due according to the actual computations unless the employer is participating in the MLPP. In that event, the amount due is the MLPP amount computed by the department.

Cost of collection and administration of the Mississippi Workforce Enhancement Training contribution, the State Workforce Investment contribution and the Mississippi Works contribution shall be allocated based on a plan approved by the United States Department of Labor (USDOL). The Mississippi Community College Board shall pay the cost of collecting the Mississippi Workforce Enhancement Training contributions, the State Workforce Investment Board shall pay the cost of collecting the State Workforce Investment contributions and the Mississippi Department of Employment Security shall pay the cost of collecting the Mississippi Works contributions. Payments shall be made semiannually with the cost allocated to each based on a USDOL approved plan on a pro rata basis, for periods ending in June and December of each year. Payment shall be made by each organization to the department no later than sixty (60) days after the billing date. Cost shall be allocated under the USDOL's approved plan and in the same ratio as each contribution type represents to the total authorized by subparagraph (ii)2 of this paragraph to be collected for the period.

(b) Mississippi Workforce Enhancement Training contributions and State Workforce Investment contributions shall be distributed as follows:

(i) For calendar year 2014, ninety-four and seventy-five one-hundredths percent (94.75%) shall be distributed to the Mississippi Workforce Enhancement Training Fund and the remainder shall be distributed to the State Workforce Investment Board bank account;

(ii) For calendar years subsequent to calendar year 2014, ninety-three and seventy-five one-hundredths percent (93.75%) shall be distributed to the Mississippi Workforce Enhancement Training Fund and the remainder shall be distributed to the State Workforce Investment Board bank account;

(iii) Workforce Enhancement Training contributions and State Workforce Investment contributions for calendar years 2014 and 2015 shall be distributed as provided in subparagraphs (i) and (ii) of this paragraph regardless of when the contributions were collected.

(c) All contributions collected for the State Workforce Enhancement Training Fund, the State Workforce Investment Fund and the Mississippi Works Fund will be initially deposited into the Mississippi Department of Employment Security bank account for clearing contribution collections and subsequently transferred to the Workforce Investment and Training Holding Account and will be held by the Mississippi Department of Employment Security in such account for a period of not less than thirty (30) days. After such period, the Mississippi Workforce Enhancement Training contributions shall be transferred to the Mississippi Community College Board Treasury Account, with oversight provided by the Mississippi Office of Workforce Development, the State Workforce Investment contributions and the Mississippi Works contributions shall be transferred to the Mississippi Department of Employment Security Mississippi Works Treasury Account in the same ratio as each contribution type represents to the total authorized by paragraph (a)(ii)2 of this subsection to be collected for the period and within the time frame determined by the department; however, except in cases of extraordinary circumstances, these funds shall be transferred within fifteen (15) days. Interest earnings or interest credits on deposit amounts in the Workforce Investment and Training Holding Account shall be retained in the account to pay the banking costs of the account. If after the period of twelve (12) months interest earnings less banking costs exceeds Ten Thousand Dollars ($10,000.00), such excess amounts shall be transferred to the respective accounts within thirty (30) days following the end of each calendar year on the basis described in paragraph (b) of this subsection. Interest earnings and/or interest credits for the State Workforce Investments funds shall be used for the payment of banking costs and excess amounts shall be used in accordance with the rules and regulations of the State Workforce Investment Board expenditure policies.

(d) All enforcement procedures for the collection of delinquent unemployment contributions contained in Sections 71-5-363 through 71-5-383 shall be applicable in all respects for collections of delinquent unemployment insurance contributions designated for the Unemployment Compensation Fund, the Mississippi Workforce Enhancement Training Fund, the State Workforce Investment Board Fund and the Mississippi Works Fund.

(e)(i) Except as otherwise provided for in this subparagraph (i), all monies deposited into the Mississippi Workforce Enhancement Training Fund Treasury Account shall be directed by the Mississippi Office of Workforce Development, in collaboration with the Mississippi Community College Board, in accordance with the Workforce Training Act of 1994 (Section 37-153-1 et seq.) and under policies approved by the Mississippi Office of Workforce Development for the following purposes: to provide training in collaboration with the Mississippi Community College Board and individual community and junior colleges to employers and employees in order to enhance employee productivity. Such training may be subject to a minimal administrative fee to be paid from the Mississippi Workforce Enhancement Training Fund as established by the Office of Workforce Development. The initial priority of these funds shall be for the benefit of existing businesses located within the state. Employers may request training for existing employees and/or newly hired employees from the Mississippi Office of Workforce Development. The office, in consultation with the Mississippi Community College Board, will be responsible for approving the training. A portion of the funds collected for the Mississippi Workforce Enhancement Training Fund shall be used for the development of performance measures to measure the effectiveness of the use of the Mississippi Workforce Enhancement Training Fund dollars. These performance measures shall be uniform for all training projects and shall be reported to the Governor, Lieutenant Governor, Speaker of the House, and members of the Legislature. Nothing in this section or elsewhere in law shall be interpreted as giving the Office of Workforce Development or State Workforce Investment Board authority to direct the Mississippi Community College Board or individual community or junior colleges on how to expend other funds, aside from funds appropriated to the Mississippi Workforce Enhancement Training Fund and Mississippi Works Fund, appropriated or received for workforce training. The Mississippi Office of Workforce Development, Mississippi Community College Board, individual community or junior colleges, State Workforce Investment Board and other agencies implementing or coordinating state-funded workforce development programs under state law shall cooperate with each other to promote effective workforce training in Mississippi, under the direction of the office. Any subsequent changes to these performance measures shall also be reported to the Governor, Lieutenant Governor, Speaker of the House, and members of the Legislature. A performance report for each training project and community college, based upon these measures, shall be submitted annually to the Governor, Lieutenant Governor, Speaker of the House, and members of the Legislature.

(ii) Except as otherwise provided in this paragraph (e), all funds deposited into the State Workforce Investment Board bank account shall be used for administration of State Workforce Investment Board business, the Office of Workforce Development, grants related to training, and other projects as determined appropriate by the State Workforce Investment Board and shall be nonexpiring. Policies for grants and other projects shall be approved through a majority vote of the State Workforce Investment Board.

(iii) All funds deposited into the Mississippi Department of Employment Security Mississippi Works Fund shall be disbursed exclusively by the Executive Director of the Mississippi Department of Employment Security, in accordance with the rules and regulations promulgated by the Office of Workforce Development in support of workforce training activities approved by the Mississippi Office of Workforce Development in support of economic development activities. Funds allocated by the executive director under this subparagraph (iii) shall only be utilized for the training of unemployed persons, for immediate training needs for the net new jobs created by an employer, for the retention of jobs or to create a work-ready applicant pool of Mississippians with credentials and/or post-secondary education in accordance with the state's Workforce Investment and Opportunity Act plan. The Executive Director of the Office of Workforce Development shall give priority to the training of unemployed persons. Not more than twenty-five percent (25%) of the funds may be allocated for the retention of jobs and/or creation of a work-ready applicant pool. Not more than Five Hundred Thousand Dollars ($500,000.00) may be allocated annually for the training needs of any one (1) employer. The Mississippi Office of Workforce Development, in collaboration with the Mississippi Public Community College System and its partners, shall be the primary entity to facilitate training. In no case shall these funds be used to supplant workforce funds available from any other sources, including, but not limited to, local, state or federal sources that are available for workforce training and development. Training conducted utilizing these Mississippi Works funds may be subject to a minimal administrative fee to be paid from the Mississippi Works Fund as authorized by the Mississippi Office of Workforce Development. All costs associated with the administration of these funds shall be reimbursed to the Mississippi Department of Employment Security from the Mississippi Works Fund.

(iv)1. The Department of Employment Security shall be the fiscal agent for the receipt and disbursement of all funds in the State Workforce Investment Board bank account, subject to the administrative oversight of the Office of Workforce Development.

2. In managing the State Workforce Investment Board bank account, the Office of Workforce Development, in coordination with the

Mississippi Department of Employment Security as fiscal agent, shall ensure that any funds expended for contractual services rendered to the Office of Workforce Development shall be paid only to service providers who have been selected on a competitive basis. Any contract for services entered into using funds from the Workforce Investment Fund bank account shall contain the deliverables stated in terms that allow for the assessment of work performance against measurable performance standards and shall include milestones for completion of each deliverable under the contract. For each contract for services entered into by the Office of Workforce Development, the office shall develop a quality assurance surveillance plan that specifies quality control obligations of the contractor as well as measurable inspection and acceptance criteria corresponding to the performance standards contained in the contract's statement of work.

3. Any commodities procured for the office shall be procured in accordance with the provisions of Section 31-7-13.

(v) In addition to other expenditures, the Office of Workforce Development shall expend from the State Workforce Investment Board bank account for the use and benefit of the Office of Workforce Development, such funds as are necessary to prepare and develop a study of workforce development needs that will consist of the following:

1. An identification of the state's workforce development needs through a well-documented quantitative and qualitative analysis of:

a. The current and projected workforce training needs of existing and identified potential Mississippi industries, with priority given to assessing the needs of existing in-state industry and business. Where possible, the analysis should include a verification and expansion of existing information previously developed by workforce training and service providers, as well as analysis of existing workforce data, such as the data collected through the Statewide Longitudinal Data System.

b. The needs of the state's workers and residents requiring additional workforce training to improve their work skills in order to compete for better employment opportunities, including a priority-based analysis of the critical factors currently limiting the state's ability to provide a trained and ready workforce.

c. The needs of workforce service and training providers in improving their ability to offer industry-relevant training, including an assessment of the practical limits of keeping training programs on the leading edge and eliminating those programs with marginal workforce relevance.

2. An assessment of Mississippi's current workforce development service delivery structure relative to the needs quantified in this subparagraph, including:

a. Development of a list of strengths/weaknesses/opportunities/threats (SWOT) of the current workforce development delivery system relative to the identified needs;

b. Identification of strategic options for workforce development services based on the results of the SWOT analysis; and

c. Development of results-oriented measures for each option that can be baselined and, if implemented, tracked over time, with quantifiable milestones and goals.

3. Preparation of a report presenting all subjects set out in this subparagraph to be delivered to the Lieutenant Governor, Speaker of the House of Representatives, Chairman of the Senate Finance Committee and Chairman of the House Appropriations Committee no later than February 1, 2015.

4. Following the preparation of the report, the State Workforce Investment Board shall make a recommendation to the House and Senate Appropriations Committees on future uses of funds deposited to the State Workforce Investment Fund account. Such future uses may include:

a. The development of promotion strategies for workforce development programs;

b. Initiatives designed to reduce the state's dropout rate, including the development of a statewide career awareness program;

c. The long-term monitoring of the state's workforce development programs to determine whether they are addressing the needs of business, industry, and the workers of the state; and

d. The study of the potential restructuring of the state's workforce programs and delivery systems.

(3)(a)(i) Mississippi Workforce Enhancement Training contributions and State Workforce Investment contributions shall be collected at the following rates:

1. For calendar year 2014 only, the rate of nineteen one-hundredths of one percent (.19%) based upon taxable wages of which eighteen one-hundredths of one percent (.18%) shall be the Workforce Enhancement Training contribution and one-hundredths of one percent (.01%) shall be the State Workforce Investment contribution; and

2. For calendar year 2015 only, the rate of sixteen one-hundredths of one percent (.16%), based upon taxable wages of which fifteen one-hundredths of one percent (.15%) shall be the Workforce Enhancement Training contribution and one-hundredths of one percent (.01%) shall be the State Workforce Investment contribution.

(ii) Mississippi Workforce Enhancement Training contributions, State Workforce Investment contributions and Mississippi Works contributions shall be collected at the following rates:

1. For calendar year 2016 only, at a rate of twenty-four one-hundredths percent (.24%), based upon taxable wages, of which fifteen one-hundredths percent (.15%) shall be the Workforce Enhancement Training contribution, one-hundredths of one percent (.01%) shall be the State Workforce Investment contribution and eight one-hundredths percent (.08%) shall be the Mississippi Works contribution.

2. For calendar years subsequent to calendar year 2016, at a rate of twenty one-hundredths percent (.20%), based upon taxable wages, of which fifteen one-hundredths percent (.15%) shall be the Workforce Enhancement Training contribution, one-hundredths of one percent (.01%) shall be the State Workforce Investment contribution and four one-hundredths percent (.04%) shall be the Mississippi Works contribution. The Mississippi Works contribution shall be collected for calendar years in which the general experience ratio, adjusted on the basis of the trust fund adjustment factor and reduced by fifty percent (50%), results in a general experience rate of less than two-tenths percent (.2%). In all other years the Mississippi Works contribution shall not be in effect.

(iii) The Mississippi Workforce Enhancement Training Fund contribution, the State Workforce Investment contribution and the Mississippi Works contribution shall be in addition to the general experience rate plus the individual experience rate of all employers but shall not be charged to reimbursing or rate-paying political subdivisions or institutions of higher learning, or reimbursing nonprofit organizations, as described in Sections 71-5-357 and 71-5-359.

(b) All Mississippi Workforce Enhancement Training contributions, State Workforce Investment contributions and Mississippi Works contributions collected shall be deposited initially into the Mississippi Department of Employment Security bank account for clearing contribution collections and shall within two (2) business days be transferred to the Workforce Investment and Training Holding Account. Any Mississippi Workforce Enhancement Training Fund and/or State Workforce Investment Board bank account and/or Mississippi Works Fund transactions from the Mississippi Department of Employment Security bank account for clearing contribution collections that are deposited into the Workforce Investment and Training Fund Holding Account and are not honored by a financial institution will be transferred back to the Mississippi Department of Employment Security bank account for clearing contribution collections out of funds in the Mississippi Workforce Investment and Training Fund Holding Account.

(c) Suspension of the Workforce Enhancement Training Fund contributions required pursuant to this chapter shall occur if the insured unemployment rate exceeds an average of five and five-tenths percent (5.5%) for the three (3) consecutive months immediately preceding the effective date of the new rate year following such occurrence and shall remain suspended throughout the duration of that rate year. Such suspension shall continue until such time as the three (3) consecutive months immediately preceding the effective date of the next rate year that has an insured unemployment rate of less than an average of four and five-tenths percent (4.5%). Upon such occurrence, reactivation shall be effective upon the first day of the rate year following the event that lifts suspension and shall be in effect for that year and shall continue until such time as a subsequent suspension event as described in this chapter occurs.

(d) Notwithstanding any other provision contained herein, contribution collections for the State Workforce Investment Fund, Mississippi Works

Fund and Mississippi Workforce Enhancement Training Fund shall not be suspended, under any circumstances, for tax rate year 2021, and the resulting contribution rate of twenty one-hundredths percent (.20%) shall be added to the employer's general and individual experience rate to obtain the total unemployment insurance rate for 2021.

(4) All collections due or accrued prior to any suspension of the Mississippi Workforce Enhancement Training Fund will be collected based upon the law at the time the contributions accrued, regardless of when they are actually collected.

HISTORY: Codes, 1942, § 7391; Laws, 1940, ch. 295, § 5; Laws, 1948, ch. 412, § 4b; Laws, 1950, ch. 454, § 1b; Laws, 1952, ch. 383, § 2b; Laws, 1956, ch. 404, § 2b; Laws, 1958, ch. 533, § 5b; Laws, 1962, ch. 564, § 2b; Laws, 1964, ch. 442, § 2b; Laws, 1971, ch. 519, § 7; Laws, 1979, ch. 465, § 1; Laws, 1984, ch. 301, § 1; Laws, 1998, ch. 331, § 3; Laws, 1998, ch. 491, § 2; Laws, 2005, ch. 437, § 1; Laws, 2010, ch. 302, § 1; Laws, 2010, ch. 504, § 2; Laws, 2013, ch. 309, § 6; Laws, 2014, ch. 504, § 1; Laws, 2016, ch. 302, § 1, eff from and after passage (approved Mar. 21, 2016); Laws, 2020, ch. 445, § 2, eff from and after July 1, 2020; Laws, 2020, ch. 476, § 5, eff from and after July 1, 2020.

Joint Legislative Committee Note — Section 3 of ch. 331, Laws of 1998, effective from and after July 1, 1998, amended this section. Section 2 of ch. 491, Laws of 1998, effective from and after July 2, 1998, also amended this section. As set out above, this section reflects the language of Section 2 of ch. 491, Laws of 1998, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Section 2 of ch. 504, Laws of 2010, effective upon passage (approved April 8, 2010), amended this section. Section 1 of ch. 302, Laws of 2010, effective January 1, 2010 (approved January 12, 2010), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 504, Laws of 2010, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section approved on an earlier date.

Section 2 of Chapter 445, Laws of 2020, effective from and after July 1, 2020 (became law without the Governor's signature on July 7, 2020), amended this section. Section 5 of Chapter 476, Laws of 2020, effective from and after July 1, 2020 (approved July 8, 2020), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section amended within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the October 19, 2020, meeting of the Committee.

Amendment Notes — The first 2020 amendment (ch. 445) substituted "subparagraph (ii)2 of this paragraph" for "subparagraph (ii)(2) of this paragraph" in the last paragraph of (2)(a) and in (2)(c); and added (3)(d).

The second 2020 amendment (ch. 476), in the last paragraph of (2)(a), substituted "subparagraph (ii)2. of this paragraph" for "subparagraph (ii)(2) of this paragraph"; in (2)(c), inserted "with oversight provided by the Mississippi Office of Workforce Development," and substituted "paragraph (a)(ii)2. of this subsection" for "paragraph (a)(ii)(2) of this subsection"; in (2)(e), rewrote (i), inserted "the Office of Workforce

Development in (ii), in (iii), in the first sentence, substituted "Office of Workforce Development" for State Workforce Investment Board Rules Committee" and "Mississippi Development Authority," in the third sentence, inserted "of the Office of Workforce Development," in the sixth sentence, inserted "Office of Workforce Development in collaboration with the Mississippi," and substituted "entity" for "entities," and in the next-to-last sentence, substituted "Mississippi Office of Workforce Development" for "Mississippi Department of Employment Security," in (iv)1, added "subject to the administrative oversight of the Office of Workforce Development," in (iv)2, substituted "Office of Workforce Development, in coordination with the Mississippi Department of Employment Security as fiscal agent" for "department," "Office of Workforce Development" for "State Workforce Investment Board" twice, and "office" for "board," in (iv)3, substituted "office" for "board," and in (v), substituted "Office of Workforce Development" for "department" the first time it appears and for "State Workforce Investment Board" the second time it appears.

Cross References — Payments of contributions, see § 71-5-351.

Modified rates of employer contributions, see § 71-5-355.

Regulations governing payment of benefits to employees of nonprofit organizations, see § 71-5-357.

Provisions relative to the obligations of state boards, state agencies, and political subdivisions under the Mississippi Unemployment Compensation Law, see § 71-5-359.

JUDICIAL DECISIONS

1. In general.

Printing company retained its "eligible employer" status and was entitled to lower rates than those charged to "newly subject employer" when it switched to new "employee leasing firm" to handle various payroll services for it, including reporting of wages and payment of unemployment contributions; although company had previously utilized three different "employee leasing firms," company had complete control over its employees from date of its founding ten years earlier. Clark Printing Co. v. Mississippi Empl. Sec. Comm'n, 681 So. 2d 1328, 1996 Miss. LEXIS 528 (Miss. 1996).

OPINIONS OF THE ATTORNEY GENERAL

The actions referred to in Section 71-5-353(4)(c) are ministerial in nature and there is no authority or discretion on the part of the Workforce Investment Board or the Mississippi Department of Employment Security to withhold funds which the legislature has directed be transferred to the Mississippi Workforce Enhancement Training Fund. Stonecypher, May 12, 2006, A.G. Op. 06-0182.

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation §§ 15 et seq., 18 et seq.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 284, 287.

§ 71-5-355. Modified rates.

(1) As used in this section, the following words and phrases shall have the following meanings, unless the context clearly requires otherwise:

(a) "Tax year" means any period beginning on January 1 and ending on December 31 of a year.

(b) "Computation date" means June 30 of any calendar year immediately preceding the tax year during which the particular contribution rates are effective.

(c) "Effective date" means January 1 of the tax year.

(d) Except as hereinafter provided, "payroll" means the total of all wages paid for employment by an employer as defined in Section 71-5-11, subsection H, plus the total of all remuneration paid by such employer excluded from the definition of wages by Section 71-5-351. For the computation of modified rates, "payroll" means the total of all wages paid for employment by an employer as defined in Section 71-5-11, subsection H.

(e) For the computation of modified rates, "eligible employer" means an employer whose experience-rating record has been chargeable with benefits throughout the thirty-six (36) consecutive calendar-month period ending on the computation date, except that any employer who has not been subject to the Mississippi Employment Security Law for a period of time sufficient to meet the thirty-six (36) consecutive calendar-month requirement shall be an eligible employer if his or her experience-rating record has been chargeable throughout not less than the twelve (12) consecutive calendar-month period ending on the computation date. No employer shall be considered eligible for a contribution rate less than five and four-tenths percent (5.4%) with respect to any tax year, who has failed to file any two (2) quarterly reports within the qualifying period by September 30 following the computation date. No employer or employing unit shall be eligible for a contribution rate of less than five and four-tenths percent (5.4%) for the tax year in which the employing unit is found by the department to be in violation of Section 71-5-19(2) or (3) and for the next two (2) succeeding tax years. No representative of such employing unit who was a party to a violation as described in Section 71-5-19(2) or (3), if such representative was or is an employing unit in this state, shall be eligible for a contribution rate of less than five and four-tenths percent (5.4%) for the tax year in which such violation was detected by the department and for the next two (2) succeeding tax years.

(f) With respect to any tax year, "reserve ratio" means the ratio which the total amount available for the payment of benefits in the Unemployment Compensation Fund, excluding any amount which has been credited to the account of this state under Section 903 of the Social Security Act, as amended, and which has been appropriated for the expenses of administration pursuant to Section 71-5-457 whether or not withdrawn from such account, on October 31 (close of business) of each calendar year bears to the aggregate of the taxable payrolls of all employers for the twelve (12) calendar months ending on June 30 next preceding.

(g) "Modified rates" means the rates of employer unemployment insurance contributions determined under the provisions of this chapter and the rates of newly subject employers, as provided in Section 71-5-353.

(h) For the computation of modified rates, "qualifying period" means a period of not less than the thirty-six (36) consecutive calendar months ending on the computation date throughout which an employer's experience-rating record has been chargeable with benefits; except that with respect to any eligible employer who has not been subject to this article for a period of time sufficient to meet the thirty-six (36) consecutive calendar-month requirement, "qualifying period" means the period ending on the computation date throughout which his or her experience-rating record has been chargeable with benefits, but in no event less than the twelve (12) consecutive calendar-month period ending on the computation date throughout which his or her experience-rating record has been so chargeable.

(i) The "exposure criterion" (EC) is defined as the cash balance of the Unemployment Compensation Fund which is available for the payment of benefits as of November 16 of each calendar year or the next working day if November 16 falls on a holiday or a weekend, divided by the total wages, exclusive of wages paid by all state agencies, all political subdivisions, reimbursable nonprofit corporations, and tax-exempt public service employment, for the twelve-month period ending June 30 immediately preceding such date. The EC shall be computed to four (4) decimal places and rounded up if any fraction remains.

(j) The "cost rate criterion" (CRC) is defined as follows: Beginning with January 1974, the benefits paid for the twelve-month period ending December 1974 are summed and divided by the total wages for the twelve-month period ending on June 30, 1975. Similar ratios are computed by subtracting the earliest month's benefit payments and adding the benefits of the next month in the sequence and dividing each sum of twelve (12) months' benefits by the total wages for the twelve-month period ending on the June 30 which is nearest to the final month of the period used to compute the numerator. If December is the final month of the period used to compute the numerator, then the twelve-month period ending the following June 30 will be used for the denominator. Benefits and total wages used in the computation of the cost rate criterion shall exclude all benefits and total wages applicable to state agencies, political subdivisions, reimbursable nonprofit corporations, and tax-exempt PSE employment.

The CRC shall be computed as the average for the highest monthly value of the cost rate criterion computations during each of the economic cycles since the calendar year 1974 as defined by the National Bureau of Economic Research. The CRC shall be computed to four (4) decimal places and any remainder shall be rounded up.

The CRC shall be adjusted only through annual computations and additions of future economic cycles.

(k) "Size of fund index" (SOFI) is defined as the ratio of the exposure criterion (EC) to the cost rate criterion (CRC). The target size of fund index will be fixed at 1.0. If the insured unemployment rate (IUR) exceeds a four and five-tenths percent (4.5%) average for the most recent completed July to June period, the target SOFI will be .8 and will remain at that level until the computed SOFI (the average exposure criterion of the current year and the preceding year divided by the average cost rate criterion) equals 1.0 or the average IUR falls to four and five-tenths percent (4.5%) or less for any period July to June. However, if the IUR falls below two and five-tenths percent

(2.5%) for any period July to June the target SOFI shall be 1.2 until such time as the computed SOFI is equal to or greater than 1.0 or the IUR is equal to or greater than two and five-tenths percent (2.5%), at which point the target SOFI shall return to 1.0.

(*l*) No employer's unemployment contribution general experience rate plus individual unemployment experience rate shall exceed five and four-tenths percent (5.4%). Accrual rules shall apply for purposes of computing contribution rates including associated functions.

(m) The term "general experience rate" has the same meaning as the minimum tax rate.

(2) Modified rates:

(a) For any tax year, when the reserve ratio on the preceding November 16, in the case of any tax year, equals or exceeds three percent (3%), the modified rates, as hereinafter prescribed, shall be in effect. In computation of this reserve ratio, any remainder shall be rounded down.

(b) Modified rates shall be determined for the tax year for each eligible employer on the basis of his or her experience-rating record in the following manner:

(i) The department shall maintain an experience-rating record for each employer. Nothing in this chapter shall be construed to grant any employer or individuals performing services for him or her any prior claim or rights to the amounts paid by the employer into the fund.

(ii) Benefits paid to an eligible individual shall be charged against the experience-rating record of his or her base period employers in the proportion to which the wages paid by each base period employer bears to the total wages paid to the individual by all the base period employers, provided that benefits shall not be charged to an employer's experience-rating record if the department finds that the individual:

1. Voluntarily left the employ of such employer without good cause attributable to the employer or to accept other work;

2. Was discharged by such employer for misconduct connected with his or her work;

3. Refused an offer of suitable work by such employer without good cause, and the department further finds that such benefits are based on wages for employment for such employer prior to such voluntary leaving, discharge or refusal of suitable work, as the case may be;

4. Had base period wages which included wages for previously uncovered services as defined in Section 71-5-511(e) to the extent that the Unemployment Compensation Fund is reimbursed for such benefits pursuant to Section 121 of Public Law 94-566;

5. Extended benefits paid under the provisions of Section 71-5-541 which are not reimbursable from federal funds shall be charged to the experience-rating record of base period employers;

6. Is still working for such employer on a regular part-time basis under the same employment conditions as hired. Provided, however, that benefits shall be charged against an employer if an eligible

individual is paid benefits who is still working for such employer on a part-time "as-needed" basis;

7. Was hired to replace a United States serviceman or servicewoman called into active duty and was laid off upon the return to work by that serviceman or servicewoman, unless such employer is a state agency or other political subdivision or instrumentality of the state;

8. Was paid benefits during any week while in training with the approval of the department, under the provisions of Section 71-5-513B, or for any week while in training approved under Section 236(a)(1) of the Trade Act of 1974, under the provisions of Section 71-5-513C;

9. Is not required to serve the one-week waiting period as described in Section 71-5-505(2). In that event, only the benefits paid in lieu of the waiting period week may be noncharged; or

10. Was paid benefits as a result of a fraudulent claim, provided notification was made to the Mississippi Department of Employment Security in writing or by email by the employer, within ten (10) days of the mailing of the notice of claim filed to the employer's last-known address.

(iii) Notwithstanding any other provision contained herein, an employer shall not be noncharged when the department finds that the employer or the employer's agent of record was at fault for failing to respond timely or adequately to the request of the department for information relating to an unemployment claim that was subsequently determined to be improperly paid, unless the employer or the employer's agent of record shows good cause for having failed to respond timely or adequately to the request of the department for information. For purposes of this subparagraph "good cause" means an event that prevents the employer or employer's agent of record from timely responding, and includes a natural disaster, emergency or similar event, or an illness on the part of the employer, the employer's agent of record, or their staff charged with responding to such inquiries when there is no other individual who has the knowledge or ability to respond. Any agency error that resulted in a delay in, or the failure to deliver notice to, the employer or the employer's agent of record shall also be considered good cause for purposes of this subparagraph.

(iv) The department shall compute a benefit ratio for each eligible employer, which shall be the quotient obtained by dividing the total benefits charged to his or her experience-rating record during the period his or her experience-rating record has been chargeable, but not less than the twelve (12) consecutive calendar-month period nor more than the thirty-six (36) consecutive calendar-month period ending on the computation date, by his or her total taxable payroll for the same period on which all unemployment insurance contributions due have been paid on or before the September 30 immediately following the computation date. Such benefit ratio shall be computed to the tenth of a percent (.1%), rounding any remainder to the next higher tenth.

(v)1. The unemployment insurance contribution rate for each eligible employer shall be the sum of two (2) rates: his or her individual experience rate in the range from zero percent (0%) to five and four-tenths percent (5.4%), plus a general experience rate. In no event shall the resulting unemployment insurance rate be in excess of five and four-tenths percent (5.4%), however, it is the intent of this section to provide the ability for employers to have a tax rate, the general experience rate plus the individual experience rate, of up to five and four-tenths percent (5.4%).

2. The employer's individual experience rate shall be equal to his or her benefit ratio as computed under paragraph (b)(iv) of this subsection (2).

3. The general experience rate shall be determined in the following manner: The department shall determine annually, for the thirty-six (36) consecutive calendar-month period ending on the computation date, the amount of benefits which were not charged to the record of any employer and of benefits which were ineffectively charged to the employer's experience-rating record. For the purposes of this item 3, the term "ineffectively charged benefits" shall include:

a. The total of the amounts of benefits charged to the experience-rating records of all eligible employers which caused their benefit ratios to exceed five and four-tenths percent (5.4%);

b. The total of the amounts of benefits charged to the experience-rating records of all ineligible employers which would cause their benefit ratios to exceed five and four-tenths percent (5.4%) if they were eligible employers; and

c. The total of the amounts of benefits charged or chargeable to the experience-rating record of any employer who has discontinued his or her business or whose coverage has been terminated within such period; provided, that solely for the purposes of determining the amounts of ineffectively charged benefits as herein defined, a "benefit ratio" shall be computed for each ineligible employer, which shall be the quotient obtained by dividing the total benefits charged to his or her experience-rating record throughout the period ending on the computation date, during which his or her experience-rating record has been chargeable with benefits, by his or her total taxable payroll for the same period on which all unemployment insurance contributions due have been paid on or before the September 30 immediately following the computation date; and provided further, that such benefit ratio shall be computed to the tenth of one percent (.1%) and any remainder shall be rounded to the next higher tenth.

The ratio of the sum of these amounts (subsection (2)(b)(v)3a, b and c) to the taxable wages paid during the same period divided by all eligible employers whose benefit ratio did not exceed five and four-tenths percent (5.4%), computed to the next higher tenth of one percent (.1%), shall be the general experience rate; however, the general experience rate for rate year 2014 shall be two tenths of one percent (.2%) and to that will be added the employer's individual experience rate for the total unemployment insurance rate.

4.a. Except as otherwise provided in this item 4, the general experience rate shall be adjusted by use of the size of fund index factor. This factor may be positive or negative, and shall be determined as follows: From the target SOFI, as defined in subsection (1)(k) of this section, subtract the simple average of the current and preceding years' exposure criterions divided by the cost rate criterion, as defined in subsection (1)(j) of this section. The result is then multiplied by the product of the CRC, as defined in subsection (1)(j) of this section, and total wages for the twelve-month period ending June 30 divided by the taxable wages for the twelve-month period ending June 30. This is the percentage positive or negative added to the general experience rate. The sum of the general experience rate and the trust fund adjustment factor shall be multiplied by fifty percent (50%) and this product shall be computed to one (1) decimal place, and rounded to the next higher tenth.

b. Notwithstanding the minimum rate provisions as set forth in subsection (1)(l) of this section, the general experience rate of all employers shall be reduced by seven one-hundredths of one percent (.07%) for calendar year 2013 only.

5. The general experience rate shall be zero percent (0%) unless the general experience ratio for any tax year as computed and adjusted on the basis of the trust fund adjustment factor and reduced by fifty percent (50%) is an amount equal to or greater than two-tenths of one percent (.2%), then the general experience rate shall be the computed general experience ratio and adjusted on the basis of the trust fund adjustment factor and reduced by fifty percent (50%); however, in no case shall the sum of the general experience plus the individual experience unemployment insurance rate exceed five and four-tenths percent (5.4%). For rate years subsequent to 2014, Mississippi Workforce Enhancement Training contribution rate, and/or State Workforce Investment contribution rate, and/or Mississippi Works contribution rate, when in effect, shall be added to the unemployment contribution rate, regardless of whether the addition of this contribution rate causes the total contribution rate for the employer to exceed five and four-tenths percent (5.4%).

6. The department shall include in its annual rate notice to employers a brief explanation of the elements of the general experience rate, and shall include in its regular publications an annual analysis of benefits not charged to the record of any employer, and of the benefit experience of employers by industry group whose benefit ratio exceeds four percent (4%), and of any other factors which may affect the size of the general experience rate.

7. Notwithstanding any other provision contained herein, the general experience rate for calendar year 2021 shall be zero percent (0%).

Charges attributed to each employer's individual experience rate for the period March 8, 2020, through June 30, 2020, will not impact the employer's individual experience rate calculations for purposes of calculating the total unemployment insurance rate for 2021 and the two (2) subsequent tax rate years. Moreover, charges attributed to each employer's individual experience rate for the period July 1, 2020, through December 31, 2020, will not impact the employer's individual experience rate calculations for purposes of calculating the total unemployment insurance rate for 2022 and the two (2) subsequent tax rate years.

(vi) When any employing unit in any manner succeeds to or acquires the organization, trade, business or substantially all the assets thereof of an employer, excepting any assets retained by such employer incident to the liquidation of his or her obligations, whether or not such acquiring employing unit was an employer within the meaning of Section 71-5-11, subsection H, prior to such acquisition, and continues such organization, trade or business, the experience-rating and payroll records of the predecessor employer shall be transferred as of the date of acquisition to the successor employer for the purpose of rate determination.

(vii) When any employing unit succeeds to or acquires a distinct and severable portion of an organization, trade or business, the experience-rating and payroll records of such portion, if separately identifiable, shall be transferred to the successor upon:

1. The mutual consent of the predecessor and the successor;
2. Approval of the department;
3. Continued operation of the transferred portion by the successor after transfer; and
4. The execution and the filing with the department by the predecessor employer of a waiver relinquishing all rights to have the experience-rating and payroll records of the transferred portion used for the purpose of determining modified rates of contribution for such predecessor.

(viii) If the successor was an employer subject to this chapter prior to the date of acquisition, it shall continue to pay unemployment insurance contributions at the rate applicable to it from the date the acquisition occurred until the end of the then current tax year. If the successor was not an employer prior to the date of acquisition, it shall pay unemployment insurance contributions at the rate applicable to the predecessor or, if more than one (1) predecessor and the same rate is applicable to both, the rate applicable to the predecessor or predecessors, from the date the acquisition occurred until the end of the then current tax year. If the successor was not an employer prior to the date the acquisition occurred and simultaneously acquires the businesses of two (2) or more employers to whom different rates of unemployment insurance contributions are applicable, it shall pay unemployment insurance contributions from the date of the acquisition until the end of the current tax year at a rate computed on the basis of the combined experience-rating and payroll records of the predecessors as of the computation date for such tax year. In all cases the rate of unemployment insurance contributions applicable to such successor for each succeeding tax year shall be computed on the basis of the combined experience-rating and payroll records of the successor and the predecessor or predecessors.

(ix) The department shall notify each employer quarterly of the benefits paid and charged to his or her experience-rating record; and such notification, in the absence of an application for redetermination filed within thirty (30) days after the date of such notice, shall be final, conclusive and binding upon the employer for all purposes. A redetermination, made after notice and opportunity for a fair hearing, by a hearing officer designated by the department who shall consider and decide these and related applications and protests; and the finding of fact in connection therewith may be introduced into any subsequent administrative or judicial proceedings involving the determination of the rate of unemployment insurance contributions of any employer for any tax year, and shall be entitled to the same finality as is provided in this subsection with respect to the findings of fact in proceedings to redetermine the contribution rate of an employer.

(x) The department shall notify each employer of his or her rate of contribution as determined for any tax year as soon as reasonably possible after September 1 of the preceding year. Such determination shall be final, conclusive and binding upon such employer unless, within thirty (30) days after the date of such notice to his or her last-known address, the employer files with the department an application for review and redetermination of his or her contribution rate, setting forth his or her reasons therefor. If the department grants such review, the employer shall be promptly notified thereof and shall be afforded an opportunity for a fair hearing by a hearing officer designated by the department who shall consider and decide these and related applications and protests; but no employer shall be allowed, in any proceeding involving his or her rate of unemployment insurance contributions or contribution liability, to contest the chargeability to his or her account of any benefits paid in accordance with a determination, redetermination or decision pursuant to Sections 71-5-515 through 71-5-533 except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him or her, and then only in the event that he or she was not a party to such determination, redetermination, decision or to any other proceedings provided in this chapter in which the character of such services was determined. The employer shall be promptly notified of the denial of this application or of the redetermination, both of which shall become final unless, within ten (10) days after the date of notice thereof, there shall be an appeal to the department itself. Any such appeal shall be on the record before said designated hearing officer, and the decision of said department shall become final unless, within thirty (30) days after the date of notice thereof to the employer's last-known address, there shall be an appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi, in accordance with the provisions of law with respect to review of civil causes by certiorari.

(3) Notwithstanding any other provision of law, the following shall apply regarding assignment of rates and transfers of experience:

(a)(i) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the two (2) employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated and made effective on January 1 of the year following the year the transfer occurred.

(ii) If, following a transfer of experience under subparagraph (i) of this paragraph (a), the department determines that a substantial purpose of the transfer of trade or business was to obtain a reduced liability of unemployment insurance contributions, then the experience-rating accounts of the employers involved shall be combined into a single account and a single rate assigned to such account.

(b) Whenever a person who is not an employer or an employing unit under this chapter at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business shall not be transferred to such person if the department finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of unemployment insurance contributions. Instead, such person shall be assigned the new employer rate under Section 71-5-353, unless assignment of the new employer rate results in an increase of less than two percent (2%), in which case such person would be assigned the new employer rate plus an additional two percent (2%) penalty for the rate year. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of unemployment insurance contributions, the department shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(c)(i) If a person knowingly violates or attempts to violate paragraph (a) or (b) of this subsection or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of such provision, the person shall be subject to the following penalties:

1. If the person is an employer, then such employer shall be assigned the highest rate assignable under this chapter for the rate year during which such violation or attempted violation occurred and the three (3) rate years immediately following this rate year. However, if the person's business is already at such highest rate for any year, or if the amount of increase in the person's rate would be less than two percent

(2%) for such year, then the person's tax rate shall be increased by two percent (2%) for such year. The penalty rate will apply to the successor business as well as the related entity from which the employees were transferred in an effort to obtain a lower rate of unemployment insurance contributions.

2. If the person is not an employer, such person shall be subject to a civil money penalty of not more than Five Thousand Dollars ($5,000.00). Each such transaction for which advice was given and each occurrence or reoccurrence after notification being given by the department shall be a separate offense and punishable by a separate penalty. Any such fine shall be deposited in the penalty and interest account established under Section 71-5-114.

(ii) For purposes of this paragraph (c), the term "knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(iii) For purposes of this paragraph (c), the term "violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure.

(iv) In addition to the penalty imposed by subparagraph (i) of this paragraph (c), any violation of this subsection may be punishable by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment. This subsection shall prohibit prosecution under any other criminal statute of this state.

(d) The department shall establish procedures to identify the transfer or acquisition of a business for purposes of this subsection.

(e) For purposes of this subsection:

(i) "Person" has the meaning given such term by Section 7701(a)(1) of the Internal Revenue Code of 1986; and

(ii) "Employing unit" has the meaning as set forth in Section 71-5-11.

(f) This subsection shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

HISTORY: Codes, 1942, § 7392; Laws, 1940, ch. 295, § 5; Laws, 1948, ch. 412, § 4c; Laws, 1950, ch. 454, § 1c; Laws, 1952, ch. 383, § 2c; Laws, 1956, ch. 404, § 2c; Laws, 1958, ch. 533, § 5c; Laws, 1962, ch. 564, § 2c; Laws, 1964, ch. 442, § 2c; Laws, 1971, ch. 519, § 8; Laws, 1977, ch. 497, § 3; Laws, 1979, ch. 465, § 2; Laws, 1980, ch. 350; Laws, 1981, ch. 447, § 1; Laws, 1982, ch. 349, § 1; Laws, 1984, ch. 301, § 2; Laws, 1985, ch. 442; Laws, 1986, ch. 319, § 1; Laws, 1987, ch. 394; Laws, 1988, ch. 322, § 1; Laws, 1991, ch. 511, § 1; Laws, 1992, ch. 463, § 1; Laws, 1993, ch. 307, § 1; Laws, 1994, ch. 303, § 2; reenacted, Laws, 1995, ch. 507, § 2; Laws, 1998, ch. 331, § 4; Laws, 1999, ch. 306, § 2; Laws, 2000, ch. 412, § 2; Laws, 2005, ch. 400, § 1; Laws, 2005, ch. 437, § 2; Laws, 2007, ch. 606, § 8; Laws, 2010, ch. 302, § 2; Laws, 2010, ch. 504, § 3; Laws, 2012, ch. 515, § 60; Laws, 2013, ch. 309, § 7; Laws, 2014, ch. 350, § 1; Laws, 2014, ch. 504, § 2; Laws, 2016, ch. 302, § 2, eff from and after passage (approved Mar. 21, 2016); Laws, 2020, ch. 445, § 1, eff from and after July 1, 2020; Laws, 2021, ch. 360, § 5, eff from and after July 1, 2021.

Joint Legislative Committee Note — Section 1 of ch. 400, Laws of 2005, effective January 1, 2005, amended this section. Section 2 of ch. 437, Laws of 2005, effective January 1, 2005, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the June 29, 2005 meeting of the Committee.

Section 3 of ch. 504, Laws of 2010, effective upon passage, (approved April 8, 2010), amended this section. Section 2 of ch. 302, Laws of 2010, effective January 1, 2010 (approved January 12, 2010), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 504, Laws of 2010, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section approved on an earlier date.

Section 2 of Chapter 504, Laws of 2014, effective from and after passage (approved April 21, 2014), amended this section. Section 1 of Chapter 350, Laws of 2014, effective from and after July 1, 2014 (approved March 17, 2014), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 24, 2014, meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal statutory reference in (2)(b)(v)4.b by substituting "subsection (1)(*l*) of this section" for "subsection (1)(*l*) of this subsection." The Joint Committee ratified the correction at its July 24, 2014, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in subsection (2)(b)(v)2 by substituting "paragraph (b)(iv) of this subsection (2)" for "subsection (2)(b)(iv)." The Joint Committee ratified the correction at its August 20, 2021, meeting.

Editor's Notes — Laws of 1977, ch. 497, § 10, provides:

"SECTION 10. In the event the provisions of P.L. 94-566, the Unemployment Compensation Amendments of 1976, which mandate unemployment insurance coverage for state and local government employees, are declared unconstitutional, the amendments, which mandate unemployment insurance coverage for state and local government employees, adopted to Sections 71-5-11, 71-5-351, 71-5-355, 71-5-357, 71-5-359, 71-5-361, 71-5-511, 71-5-513 and 71-5-541, Mississippi Code of 1972, at the 1977 Regular Session of the Legislature shall stand repealed."

Amendment Notes — The second 2014 (ch. 504) amendment inserted "unemployment insurance" throughout the section; in (1)(k), deleted "For years following December 31, 2009" preceding "the target size of fund index" from the beginning of the second sentence; in (1)(*l*), first sentence, inserted "unemployment" following "No employer's", substituted "two-tenths of one percent (.2%)" for "four-tenths of one percent (.4%)", deleted the second and third sentences, and deleted "From and after January 1, 2012" preceding "accrual rules shall apply" from the beginning of the last sentence; in (2)(b)(iv), deleted the first undesignated paragraph and the table; in (2)(b)(v)3.c., added "however, the general . . . insurance rate" to the end; in (2)(b)(v)4.b, substituted "section" for "Section 71-5-355", inserted "of this section" following "(1)(*l*)", deleted "if

Chapter 309, Laws of 2013, becomes effective before March 8, 2013" preceding "the general experience rate of all", and deleted the last sentence; in (2)(b)(v)5., inserted "the general experience rate for the year shall be two-tenths of one percent (.2%)." following "it shall be disregarded and," added "and in all . . . five and four-tenths percent (5.4%)" to the end of the subsection; and made stylistic changes throughout.

The 2020 amendment added (2)(b)(v)7.

The 2021 amendment inserted "or she" and "or her" throughout the section; in (3), added "unless assignment of the new employer rate…(2%) penalty for the rate year" in the second sentence in (b), and substituted "the person's tax rate shall be increased by two percent (2%) for such year" for "a penalty rate of unemployment insurance contributions of two percent (2%) of taxable wages shall be imposed for such year" in the second sentence in (c)(i)1.

Cross References — Mississippi Employment Security Law, see §§ 71-5-1 et seq.

Regulations governing payment of benefits to employees of nonprofit organizations, see § 71-5-357.

Provisions relative to the obligations of state boards, state agencies, and political subdivisions under the Mississippi Unemployment Compensation Law, see § 71-5-359.

Federal Aspects— Trade Act of 1974, generally, see 19 USCS 2101 et seq. Federal Unemployment Tax Act – credits against tax; approval of state laws, 26 USCS §§ 3302, 3304.

Section 7701(a)(1) of the Internal Revenue Code, see 26 USCS § 7701(a)(1).

Provisions of Section 903 of the Social Security Act, see 42 USCS § 1103.

JUDICIAL DECISIONS

1. In general.

Trial court properly upheld an order from the Mississippi Employment Security Commission, which held that a company's appeal of an order declaring that a claimant for unemployment benefits was an employee and not a part-owner was untimely, where the appeal was not filed within 10 days of the decision, as required by Miss. Code Ann. § 71-5-355(2)(b)(ix). O & J Loading Serv., LLC v. Miss. Empl. Sec. Comm'n, 971 So. 2d 597, 2007 Miss. App. LEXIS 51 (Miss. Ct. App. 2007).

A knit shirt manufacturer was not a successor employer of a military shirt manufacturer under § 71-5-355(2)(b)(v), for purposes of assessing the knit shirt manufacturer's unemployment rate of contributions, even though the knit shirt manufacturer was located in a building previously occupied by the military shirt manufacturer, and the knit shirt manufacturer purchased some of the military shirt manufacturer's equipment and employed some of its former employees, where the 2 companies were totally unrelated, having no common directors, officers or shareholders, the knit shirt manufacturer did not know any of the military shirt manufacturer's customers, the knit shirt manufacturer bought none of the military manufacturer's goodwill, accounts receivable, or any other assets, and the knit shirt manufacturer manufactured an entirely different product sold to entirely different types and kinds of purchasers. Prentiss Mfg. Co. v. Mississippi Employment Sec. Com., 558 So. 2d 866, 1990 Miss. LEXIS 175 (Miss. 1990).

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation §§ 15 et seq., 18 et seq.

24 Am. Jur. Pl & Pr Forms (Rev), Unemployment Compensation, Forms 17, 18.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 284, 287.

§ 71-5-357. Regulations governing nonprofit organizations [Repealed effective July 1, 2023].

Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this section. For the purpose of this section, a nonprofit organization is an organization (or group of organizations) described in Section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from income tax under Section 501(a) of such code (26 USCS Section 501).

(a) Any nonprofit organization which, under Section 71-5-11, subsection H(3), is or becomes subject to this chapter shall pay contributions under the provisions of Sections 71-5-351 through 71-5-355 unless it elects, in accordance with this paragraph, to pay to the department for the unemployment fund an amount equal to the amount of regular benefits and one-half (1/2) of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(i) Any nonprofit organization which becomes subject to this chapter may elect to become liable for payments in lieu of contributions for a period of not less than twelve (12) months, beginning with the date on which such subjectivity begins, by filing a written notice of its election with the department not later than thirty (30) days immediately following the date of the determination of such subjectivity.

(ii) Any nonprofit organization which makes an election in accordance with subparagraph (i) of this paragraph will continue to be liable for payments in lieu of contributions unless it files with the department a written termination notice not later than thirty (30) days prior to the beginning of the tax year for which such termination shall first be effective.

(iii) Any nonprofit organization which has been paying contributions under this chapter may change to a reimbursable basis by filing with the department, not later than thirty (30) days prior to the beginning of any tax year, a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next tax year.

(iv) The department may for good cause extend the period within which a notice of election or a notice of termination must be filed, and may permit an election to be retroactive.

(v) The department, in accordance with such regulations as it may prescribe, shall notify each nonprofit organization of any determination which it may make of its status as an employer, of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review in accordance with the provisions of Sections 71-5-351 through 71-5-355.

(b) Payments in lieu of contributions shall be made in accordance with the provisions of subparagraph (i) of this paragraph.

(i) At the end of each calendar quarter, or at the end of any other period as determined by the department, the department shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions, for an amount equal to the full amount of regular benefits plus one-half (1/2) of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization.

(ii) Payment of any bill rendered under subparagraph (i) of this paragraph shall be made not later than forty-five (45) days after such bill was delivered to the nonprofit organization, unless there has been an application for review and redetermination in accordance with subparagraph (v) of this paragraph.

1. All of the enforcement procedures for the collection of delinquent contributions contained in Sections 71-5-363 through 71-5-383 shall be applicable in all respects for the collection of delinquent payments due by nonprofit organizations who have elected to become liable for payments in lieu of contributions.

2. If any nonprofit organization is delinquent in making payments in lieu of contributions, the department may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next tax year, and such termination shall be effective for the balance of such tax year.

(iii) Payments made by any nonprofit organization under the provisions of this paragraph shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(iv) Payments due by employers who elect to reimburse the fund in lieu of contributions as provided in this paragraph may not be noncharged under any condition. The reimbursement must be on a dollar-for-dollar basis (One Dollar ($1.00) reimbursement for each dollar paid in benefits) in every case, so that the trust fund shall be reimbursed in full, such reimbursement to include, but not be limited to, benefits or payments erroneously or incorrectly paid, or paid as a result of a determination of eligibility which is subsequently reversed, or paid as a result of claimant fraud. However, political subdivisions who are reimbursing employers may elect to pay to the fund an amount equal to five-tenths percent (.5%) through December 31, 2010, and shall pay twenty-five one-hundredths percent (.25%) thereafter of the taxable wages paid during the calendar year with respect to employment, and those employers who so elect shall be relieved of liability for reimbursement of benefits paid under the same conditions that benefits are not charged to the experience-rating record of a contributing employer as provided in Section 71-5-355(2)(b)(ii) other than Clause 5 thereof. Benefits paid in such circumstances for which reimbursing employers are relieved of liability for reimbursement shall not be considered attributable to service in the employment of such reimbursing employer.

(v) The amount due specified in any bill from the department shall be conclusive on the organization unless, not later than fifteen (15) days after the bill was delivered to it, the organization files an application for redetermination by the department, setting forth the grounds for such application or appeal. The department shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive on the organization unless, not later than fifteen (15) days after the redetermination was delivered to it, the organization files an appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi, in accordance with the provisions of law with respect to review of civil causes by certiorari.

(vi) Past-due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, pursuant to Section 71-5-363, apply to past-due contributions.

(c) Each employer that is liable for payments in lieu of contributions shall pay to the department for the fund the amount of regular benefits plus the amount of one-half (1/2) of extended benefits paid are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one (1) employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of subparagraph (i) or subparagraph (ii) of this paragraph.

(i) If benefits paid to an individual are based on wages paid by one or more employers that are liable for payment in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employers.

(ii) If benefits paid to an individual are based on wages paid by two (2) or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employers.

(d) In the discretion of the department, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required to execute and file with the department a surety bond approved by the department, or it may elect instead to deposit with the department money or securities. The amount of such bond or deposit shall be determined in accordance with the provisions of this paragraph.

(i) The amount of the bond or deposit required by paragraph (d) shall be equal to two and seven-tenths percent (2.7%) thereafter to December 31, 2010, and one and thirty-five one-hundredths percent (1.35%) thereafter, of the organization's taxable wages paid for employment as defined in Section 71-5-11, subsection I(4), for the four (4) calendar quarters immediately preceding the effective date of the election, the renewal date in the case of a bond, or the biennial anniversary of the effective date of election in the case of a deposit of money or securities, whichever date shall be most recent and applicable. If the nonprofit organization did not pay wages in each of such four (4) calendar quarters, the amount of the bond or deposit shall be as determined by the department.

(ii) Any bond deposited under paragraph (d) shall be in force for a period of not less than two (2) tax years and shall be renewed with the approval of the department at such times as the department may prescribe, but not less frequently than at intervals of two (2) years as long as the organization continues to be liable for payments in lieu of contributions. The department shall require adjustments to be made in a previously filed bond as it deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within thirty (30) days of the date notice of the required adjustment was delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of contributions when due, together with any applicable interest and penalties provided in paragraph (b)(v) of this section, shall render the surety liable on the bond to the extent of the bond, as though the surety was such organization.

(iii) Any deposit of money or securities in accordance with paragraph (d) shall be retained by the department in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The department may deduct from the money deposited under paragraph (d) by a nonprofit organization, or sell the securities it has so deposited, to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in paragraph (b)(v) of this section. The department shall require the organization, within thirty (30) days following any deduction from a money deposit or sale of deposited securities under the provisions hereof, to deposit sufficient additional money or securities to make whole the organization's deposit at the prior level. Any cash remaining from the sale of such securities shall be a part of the organization's escrow account. The department may, at any time, review the adequacy of the deposit made by any organization. If, as a result of such review, it determines that an adjustment is necessary, it shall require the organization to make additional deposit within thirty (30) days of notice of its determination or shall return to it such portion of the deposit as it no longer considers necessary, whichever action is appropriate. Disposition of income from securities held in escrow shall be governed by the applicable provisions of the state law.

(iv) If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount, or to increase or make whole the amount of a previously made deposit as provided under this subparagraph, the department may terminate such organization's election to make payments in lieu of contributions, and such termination shall continue for not less than the four (4) consecutive calendar-quarter periods beginning with the quarter in which such termination becomes effective; however, the department may extend for good cause the applicable filing, deposit or adjustment period by not more than thirty (30) days.

(v) Group account shall be established according to regulations prescribed by the department.

(e) Any employer which elects to make payments in lieu of contributions into the Unemployment Compensation Fund as provided in this paragraph shall not be liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in Section 71-5-511(e) to the extent that the Unemployment Compensation Fund is reimbursed for such benefits pursuant to Section 121 of Public Law 94-566.

HISTORY: Codes, 1942, § 7392.3; Laws, 1971, ch. 519, § 16; Laws, 1977, ch. 497, § 4; Laws, 1978, ch. 339, § 1; Laws, 1982, ch. 480, § 1; Laws, 1983, ch. 361; Laws, 1998, ch. 331, § 5; Laws, 2002, ch. 562, § 2; Laws, 2004, ch. 572, § 34; Laws, 2007, ch. 606, § 9; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 34; Laws, 2010, ch. 504, § 4; reenacted without change, Laws, 2010, ch. 559, § 33; reenacted without change, Laws, 2011, ch. 471, § 34; reenacted and amended, Laws, 2012, ch. 515, § 34; Laws, 2013, ch. 309, § 15, eff from and after passage (approved March 6, 2013); reenacted without change, Laws, 2019, ch. 451, § 34, eff from and after April 3, 2019.

Joint Legislative Committee Note — Section 33 of ch. 559, Laws of 2010, effective July 1, 2010 (approved May 12, 2010), amended this section. Section 4 of ch. 504, Laws of 2010, effective upon passage (approved April 8, 2010), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 22, 2010, meeting of the Committee.

Editor's Notes — Laws of 1977, ch. 497, § 10, provides:

"SECTION 10. In the event the provisions of P.L. 94-566, the Unemployment Compensation Amendments of 1976, which mandate unemployment insurance coverage for state and local government employees, are declared unconstitutional, the amendments, which mandate unemployment insurance coverage for state and local government employees, adopted to Sections 71-5-11, 71-5-351, 71-5-355, 71-5-357, 71-5-359, 71-5-361, 71-5-511, 71-5-513 and 71-5-541, Mississippi Code of 1972, at the 1977 Regular Session of the Legislature shall stand repealed."

Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Provisions relative to the obligations of state boards, state agencies, and political subdivisions under the Mississippi Unemployment Compensation Law, see § 71-5-359.

Eligibility conditions on receipt of benefits, see § 71-5-511.

Federal Aspects— Section 501(a) of the Internal Revenue Code is codified as 26 USCS § 501(a).

JUDICIAL DECISIONS

1. In general.

Where a worker was employed by two separate employers, a contributing employer within the meaning of § 71-5-351, and a reimbursing employer within the meaning of § 71-5-357, the reimbursing employer, a school district, was required to reimburse the state for a pro rata share of benefits paid under § 71-5-357(c)(i), even though it continued to employ the worker on a part-time basis. McLaurin v. Mississippi Employment Sec. Com., 435 So. 2d 1170, 1983 Miss. LEXIS 2781 (Miss. 1983).

Political subdivisions of the State of Mississippi which reimbursed the state unemployment fund for benefits which it paid to unemployed workers for service with such subdivisions, were not liable for erroneously paid benefits to an unemployed worker by the Mississippi Employment Sec. Com. v. Columbus Light & Water Dep't, 424 So. 2d 553, 1982 Miss. LEXIS 2315 (Miss. 1982).

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation § 23.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 284, 287.

§ 71-5-359. Regulations governing state boards, instrumentalities, and political subdivisions [Repealed effective July 1, 2023].

(1) The Department of Finance and Administration shall, in the manner provided in subsection (3) of this section, pay, upon notice issued by the department, to the department for the Unemployment Compensation Fund an amount equal to the regular benefits and one-half (1/2) of the extended benefits paid that are attributable to service in the employ of a state agency. The amount required to be reimbursed by a certain agency shall be billed to the Department of Finance and Administration and shall be paid from the Employment Compensation Revolving Fund pursuant to subsection (3) of this section not later than thirty (30) days after such bill was sent, unless there has been an application for review and redetermination in accordance with Section 71-5-357(b)(v).

(2) The Department of Finance and Administration shall, in the manner provided in subsection (3) of this section, pay, upon a notice issued by the department, to the department for the Unemployment Compensation Fund an amount equal to the regular benefits and the extended benefits paid that are attributable to service in the employ of a state agency. The amount required to be reimbursed by a certain agency shall be billed to the Department of Finance and Administration and shall be paid from the Employment Compensation Revolving Fund pursuant to subsection (3) of this section not later than thirty

(30) days after such bill was sent, unless there has been an application for review and redetermination in accordance with Section 71-5-357(b)(v).

(3) Each agency of state government shall deposit monthly for a period of twenty-four (24) months an amount equal to one-twelfth of one percent (1/12 of 1%) of the first Six Thousand Dollars ($6,000.00) paid to each employee thereof during the next preceding year into the Employment Compensation Revolving Fund that is created in the State Treasury. The Department of Finance and Administration shall determine the percentage to be applied to the amount of covered wages paid in order to maintain a balance in the revolving fund of not less than the amount determined by an actuary through an annual actuarial evaluation. The State Treasurer shall invest all funds in the Employment Compensation Revolving Fund and all interest earned shall be credited to the Employment Compensation Revolving Fund.

The reimbursement of benefits paid by the Mississippi Department of Employment Security shall be paid by the Department of Finance and Administration from the Employment Compensation Revolving Fund upon notice from the department; and the Department of Finance and Administration shall issue warrants or may contract for the performance of the duties prescribed by subsections (2) and (3) of this section, and other duties necessarily related thereto.

(4) Any political subdivision of this state shall pay to the department for the unemployment compensation fund an amount equal to the regular benefits and the extended benefits paid that are attributable to service in the employ of such political subdivision unless it elects to make contributions to the unemployment fund as provided in subsection (9) of this section. The amount required to be reimbursed shall be billed and shall be paid as provided in Section 71-5-357, with respect to similar payments for nonprofit organizations.

(5) Each political subdivision, unless it elects to make contributions to the unemployment compensation fund as provided in subsection (9) of this section, shall establish a revolving fund and deposit an amount equal to two percent (2%) of the first Six Thousand Dollars ($6,000.00) paid to each employee thereof during the next preceding year. However, the department shall by regulation establish a procedure to allow reimbursing political subdivisions to elect to maintain the balance in the revolving fund as required under this subsection or to annually execute a surety bond to be approved by the department in an amount not less than two percent (2%) of the covered wages paid during the next preceding year.

(6) In the event any political subdivision becomes delinquent in payments due under this chapter, upon due notice, and upon certification of the delinquency by the department to the Department of Finance and Administration, the Department of Revenue, the Department of Environmental Quality and the Department of Insurance, or any of them, or any other agencies of the State of Mississippi that may be indebted to such delinquent political subdivision, such agencies shall direct the issuance of warrants which in the aggregate shall be the amount of such delinquency payable to the department and drawn upon any funds in the State Treasury which may be available to

such political subdivision in satisfaction of any such delinquency. This remedy shall be in addition to any other collection remedies in this chapter or otherwise provided by law.

(7) Payments made by any political subdivision under the provisions of this section shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(8) Any governmental entity shall not be liable to make payments to the unemployment fund with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in Section 71-5-511, subsection (e), to the extent that the Unemployment Compensation Fund is reimbursed for such benefits pursuant to Section 121 of Public Law 94-566.

(9) Any political subdivision of this state may elect to make contributions to the unemployment fund instead of making reimbursement for benefits paid as provided in subsections (4) and (5) of this section. A political subdivision which makes this election shall so notify the department, not later than three (3) months after it is officially organized or is otherwise established, and shall be subject to the provisions of Section 71-5-351, with regard to the payment of contributions. A political subdivision which makes this election shall pay contributions equal to two percent (2%) of taxable wages through calendar year 2010, and one percent (1%) of taxable wages thereafter paid by it during each calendar quarter it is subject to this chapter. The department shall by regulation establish a procedure to allow political subdivisions the option periodically to elect either the reimbursement or the contribution method of financing unemployment compensation coverage.

HISTORY: Codes, 1942, § 7392.5; Laws, 1971, ch. 519, § 17; Laws, 1977, ch. 497, § 5; Laws, 1978, ch. 340, § 1; Laws, 1984, ch. 488, § 274; Laws, 1986, ch. 320; Laws, 1993, ch. 353, § 1; Laws, 1993, ch. 397, § 1; Laws, 1995, ch. 507, § 3; Laws, 2004, ch. 572, § 35; Laws, 2007, ch. 556, § 1; Laws, 2007, ch. 606, § 10; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 35; Laws, 2010, ch. 504, § 5; reenacted without change, Laws, 2010, ch. 559, § 34; reenacted and amended, Laws, 2011, ch. 471, § 35; reenacted without change, Laws, 2012, ch. 515, § 35, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 35, eff from and after April 3, 2019.

Joint Legislative Committee Note — Section 1 of ch. 556, Laws of 2007, effective July 1, 2007 (approved April 20, 2007), amended this section. Section 10 of ch. 606, Laws of 2007, effective July 1, 2007 (approved April 25, 2007), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the June 26, 2007, meeting of the Committee.

Section 34 of ch. 559, Laws of 2010, effective July 1, 2010 (approved May 12, 2010), amended this section. Section 5 of ch. 504, Laws of 2010, effective upon passage (approved April 8, 2010), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109 which gives the

Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 22, 2010, meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in subsection (5) by substituting "this subsection" for "this paragraph." The Joint Committee ratified the correction at its August 20, 2021, meeting.

Editor's Notes — Laws of 1977, ch. 497, § 10, provides:

"SECTION 10. In the event the provisions of P.L. 94-566, the Unemployment Compensation Amendments of 1976, which mandate unemployment insurance coverage for state and local government employees, are declared unconstitutional, the amendments, which mandate unemployment insurance coverage for state and local government employees, adopted to Sections 71-5-11, 71-5-351, 71-5-355, 71-5-357, 71-5-359, 71-5-361, 71-5-511, 71-5-513 and 71-5-541, Mississippi Code of 1972, at the 1977 Regular Session of the Legislature shall stand repealed."

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Joint legislative budget committee and legislative budget office generally, see §§ 27-103-101 et seq.

Eligibility conditions on receipt of benefits, see § 71-5-511.

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation § 28.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 284, 287.

§ 71-5-361. Period, election, and termination.

(1) Except as provided in subsection (3) of this section, any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be deemed to be an employer during the whole of such calendar year.

(2) Except as otherwise provided in subsection (3) of this section:

(a) An employing unit (other than a state hospital, state institution of higher learning, state or state agency or other political subdivision or instrumentality) except as provided in paragraphs (b) and (c) of this subsection, shall cease to be an employer subject to this chapter only as of the first day of January of any calendar year, only if it files with the department on or before the thirty-first day of May of such year a written application for termination of coverage, and the department finds that during the preceding calendar year the employing unit did not pay wages of

One Thousand Five Hundred Dollars ($1,500.00) or more in any calendar quarter and that there were no twenty (20) days, each day being in a different week within the preceding calendar year, within which such employing unit employed one or more individuals in employment subject to this chapter, or four (4) or more in the case of nonprofit organizations, except if the department finds that throughout a calendar year an employer has had no employment, it shall cease to be an employer subject to this chapter.

(b) An agricultural employer as defined under Section 71-5-11, subsection H(4)(a) shall cease to be an agricultural employer subject to this chapter only as of the first day of January of any calendar year, only if it files with the department on or before the thirty-first day of May of such year a written application for termination of coverage, and the department finds that during the preceding calendar year the employing unit did not pay for agricultural employment wages as defined in Section 71-5-11, subsection I(6) of Twenty Thousand Dollars ($20,000.00) in any calendar quarter of the preceding calendar year and that there were no twenty (20) days, each day being in a different week, within such calendar year, within which such employing unit employed ten (10) or more individuals in employment subject to this chapter, except if the department finds that throughout a calendar year an employer has had no employment, it shall cease to be an employer subject to this chapter.

(c) A domestic employer, as defined in Section 71-5-11, subsection H(4)(b), shall cease to be an employer subject to this chapter only as of the first day of January of any calendar year, only if it files with the department on or before the thirty-first day of May of such year a written application for termination of coverage, and the department finds that during the preceding calendar year the employing unit did not pay wages for domestic employment of One Thousand Dollars ($1,000.00) or more in any calendar quarter of the preceding calendar year, except if the department finds that throughout a calendar year an employer has had no employment, it shall cease to be an employer subject to this chapter.

(d) For the purpose of this subsection, the two (2) or more employing units mentioned in Section 71-5-11, subsection H(5) or (6), shall be treated as a single employing unit. The department may, of its own motion, cancel and terminate the effect of registrations for purposes of its accounting records in cases where it has found that employing units, duly registered as covered employers under the chapter, have died, ceased business or removed from the state without applying for termination of coverage, provided that the rights of claimants for benefits shall not be affected thereby.

(3)(a) An employing unit, not otherwise subject to this chapter, which files with the department its written election to become an employer subject thereto for not less than two (2) calendar years shall, with the written approval of such election by the department or the executive director, become an employer subject hereto to the same extent as all other employers as of the date stated in such approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to such two (2) calendar years only if it files with the department, on or before the thirty-first day of May of such year, a written application for termination of coverage thereunder.

(b) Any employing unit, for which services that do not constitute employment as defined in this chapter are performed, may file with the department a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment by an employer for all purposes of this chapter for not less than two (2) calendar years. Upon written approval of such election by the department, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two (2) calendar years only if, prior to the thirty-first day of May of such year, such employing unit has filed with the department a written notice to that effect.

(4)(a) Prior to January 1, 1978, any political subdivision of this state may elect to cover under this chapter, for a period of not less than two (2) calendar years, services performed by employees in all of the hospitals and institutions of higher learning, as defined in Section 71-5-11, subsection M or N, operated by such political subdivision. Election is to be made by filing with the department a notice of such election at least thirty (30) days prior to the effective date of such election. The election may exclude any services described in Section 71-5-11, subsection I(5). Any political subdivision electing coverage under this subsection shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided with respect to nonprofit organizations in subsections (b) and (c) of Section 71-5-357.

(b) Prior to January 1, 1978, the provisions in Section 71-5-511, subsection (g) with respect to benefit rights based on service for state and nonprofit institutions of higher learning shall be applicable also to service covered by an election under this section.

(c) Prior to January 1, 1978, the amounts required to be paid in lieu of contributions by any political subdivision under this section shall be billed and payment made as provided in subsections (b) and (c) of Section 71-5-357.

(d) Prior to January 1, 1978, an election under this section, after having been in effect for not less than two (2) calendar years, may be terminated by filing with the department written notice not later than thirty (30) days preceding the last day of the calendar year in which the termination is to be effective. Such termination becomes effective as of the first day of the next ensuing calendar year with respect to services performed on and after that date.

HISTORY: Codes, 1942, § 7393; Laws, 1940, ch. 295; Laws, 1955, Ex. ch. 93, § 1; Laws, 1971, ch. 519, § 9; Laws, 1977, ch. 497, § 6; Laws, 2013, ch. 309, § 16, eff from and after passage (approved March 6, 2013).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in subsection (2)(a) by substituting "paragraphs (b) and (c) of this subsection" for "subsection (b) and (c) of this subsection." The Joint Committee ratified the correction at its August 20, 2021, meeting.

Editor's Notes — Laws of 1977, ch. 497, § 10, provides:

"SECTION 10. In the event the provisions of P.L. 94-566, the Unemployment Compensation Amendments of 1976, which mandate unemployment insurance coverage for state and local government employees, are declared unconstitutional, the amendments, which mandate unemployment insurance coverage for state and local government employees, adopted to Sections 71-5-11, 71-5-351, 71-5-355, 71-5-357, 71-5-359, 71-5-361, 71-5-511, 71-5-513 and 71-5-541, Mississippi Code of 1972, at the 1977 Regular Session of the Legislature shall stand repealed."

Cross References — Definitions of employing unit and employer, see § 71-5-11.

Conditions of eligibility for benefits, see § 71-5-511.

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation §§ 20, 21, 26.

24 Am. Jur. Pl & Pr Forms (Rev), Unemployment Compensation, Forms 18, 20, 23.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 289, 309-311 et seq.

§ 71-5-363. Interest on past due contributions; abatement of interest accrued on past-due contributions under certain circumstances.

(1) Contributions unpaid on the date on which they are due and payable shall bear interest at the rate of one percent (1%) per month from and after such date until payment plus accrued interest is received by the department, provided that the department may prescribe fair and reasonable general rules pursuant to which such interest shall not accrue during the first calendar year that any employer is subject to this chapter. Interest collected pursuant to this section shall be paid into the Special Employment Security Administration Fund established by Section 71-5-114.

(2) Notwithstanding the provisions of subsection (1) of this section, the executive director or his or her designee within the department shall have the discretion, subject only to federal laws and regulations, to abate interest accrued on past-due contributions or overpayments, in part or in full, when negotiating the settlements of past-due amounts owed to the agency.

HISTORY: Codes, 1942, § 7423; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9a; Laws, 1958, ch. 533, § 7a; Laws, 1968, ch. 561, § 3a; Laws, 1982, ch. 383, § 2, eff from and after July 1, 1982; Laws, 2021, ch. 360, § 3, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in (1), substituted "department" for "commission" both times it appears; and added (2).

Cross References — Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see

§ 71-5-19.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Composition and control of unemployment compensation fund, see § 71-5-451.

Collection of overpayments due to disqualification for benefits, see § 71-5-513.

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation § 9.

CJS.

81 C.J.S., Social Security and Public Welfare § 352.

§ 71-5-365. Failure to make reports and pay contributions.

If any employer fails to make and file any report as and when required by the terms and provisions of this chapter or by any rule or regulation of the commission for the purpose of determining the amount of contributions due by him or her under this chapter, or if any report which has been filed is deemed by the executive director or his or her designee within the department to be incorrect or insufficient, and such employer, after having been given notice by the executive director or his or her designee within the department to file such report, or a corrected or sufficient report, as the case may be, shall fail to file such report within fifteen (15) days after the date of such notice, the executive director or his or her designee within the department may (a) determine the amount of contributions due from such noncompliant employer on the basis of the best information that may be readily available to the department, which determination shall be prima facie correct, (b) assess such noncompliant employer with the amount of contribution so determined as due, to which amount may be added and assessed by the executive director or his or her designee within the department in his or her discretion, as damages, in an amount equal to ten percent (10%) of the assessed amount, and (c) immediately give notice to such noncompliant employer of such determination, assessment, and penalties, if any, added and assessed, demanding payment of same together with interest, as herein provided, on the amount of contributions owed from the date when same were due and payable. Such determination and assessment by the executive director or his or her designee within the department shall be final at the expiration of fifteen (15) days from the date of such notice thereof demanding payment, unless:

(a) Such employer shall have filed with the department a written protest and petition for a hearing, specifying his or her objections thereto. Upon receipt of such petition within the fifteen (15) days allowed, the department shall fix the time and place for a hearing and shall notify the petitioner thereof. At any hearing held before the department as herein provided, evidence may be offered to support such determination and assessment or to prove that it is incorrect, and the commission shall have all the power provided in Sections 71-5-137 and 71-5-139. Immediately after such hearing a final decision in the matter shall be made by the commission, and any contributions or deficiencies in contributions found and determined by the commission to be due shall be assessed and paid, together with interest, within fifteen (15) days after notice of such final decision and assessment, and demand for payment thereof by the department shall have been sent to such employer.

(b) The department, in its discretion, determines on the basis of information submitted by the employer that such assessment should be amended and adjusted to reflect the correct amount of taxes.

Sixty (60) days after the due date of the contributions, together with interest and damages, or upon issuance of a warrant, whichever occurs first, the department, in its discretion, may assess an additional sum not exceeding one hundred percent (100%) of the amount of the unpaid contributions due as penalties for failure to pay.

HISTORY: Codes, 1942, § 7424; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9b; Laws, 1958, ch. 533, § 7b; Laws, 1968, ch. 561, § 3b; Laws, 1991, ch. 511, § 2; Laws, 1995, ch. 507, § 4; Laws, 2007, ch. 606, § 11, eff from and after July 1, 2007; Laws, 2021, ch. 360, § 2, eff from and after July 1, 2021.

Editor's Notes — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Amendment Notes — The 2021 amendment, in the first paragraph, inserted "or his or her designee within the department" five times, in (a), substituted "such noncompliant employer on the basis of the best information that may be readily available to the department" for "such employer on the basis of such information as may be readily available to him," in (b), inserted "noncompliant," "as due," "in" preceding "an amount," and substituted "the assessed amount" for "said amount," and in (c), inserted "noncompliant" and "owed," and substituted "penalties" for "damages"; and in the last paragraph, substituted "penalties" for "damages."

Cross References — Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see § 71-5-19.

Deposit or transfer of interest, penalties and damages into special employment security administration fund, see § 71-5-114.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Collection of overpayments due to disqualification for benefits, see § 71-5-513.

RESEARCH REFERENCES

ALR.

Construction, application, and effect, with respect to withholding, social security, and unemployment compensation taxes, of statutes imposing penalties for tax evasion or default. 22 A.L.R.3d 8.

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation § 9.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 373 et seq.

§ 71-5-367. Collection by warrant.

If an employer shall file a report in proper form and in proper amount, but shall fail to pay the amount of contributions shown to be due thereby at the time of such filing, or if an employer shall fail to pay any assessment as provided and made under Section 71-5-365 within fifteen (15) days after such assessment has become final as herein provided, the department may issue a warrant under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of such employer as has defaulted in the payment of such contributions or assessments, which may be found within his county, for the payment of the amount thereof, together with interest, damages, if any, assessed for failure to make and file a report or a corrected or sufficient report, and an additional sum not exceeding one hundred percent (100%) of the amount of the unpaid contributions due, in the discretion of the department, as damages for failure to pay, if not already assessed under Section 71-5-365 and the costs of executing the warrant and to return such warrant to the department, and to pay to it the money collected by virtue thereof on the date specified therein. The department shall cause to be delivered to the clerk of the circuit court a copy of such warrant issued to the sheriff. Such clerk shall enter in the judgment roll, in the column for judgment debtors, the name of the employer mentioned in the warrant and, in appropriate columns, the amount of contributions, interest and damages for which the warrant is issued, a notation that the lien covers all previous, current and future periods for the life of the lien, and the date when such copy is filed. Thereupon the amount of such warrant so filed and entered shall become a lien upon the title to and interest in all real and personal property, including choses in action against negotiable instruments not past due, of the employer against whom the warrant is issued in the same manner as a judgment duly enrolled in the office of such clerk. Any such liens shall cover all contributions, interest and damages owed to the department from previous, current and future periods until the expiration of such lien or until the amount of the lien is fully satisfied. Such judgment shall not be a lien upon the property of the employer for a period of more than seven (7) years from the date of filing of the notice of the tax lien for failure to pay contributions, damages and interest unless action be brought thereon before the expiration of such time or unless the department refiles such notice of tax lien before the expiration of such time. The judgment shall be a lien upon the property of the employer for a period of seven (7) years from the date of refiling such notice of tax lien unless action be brought thereon before the expiration of such time or unless the department refiles such notice of tax lien before the expiration of such time. There shall be no limit upon the number of times the department may refile notices of tax liens. The sheriff shall proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments or in attachment proceedings of a court of record, and the remedies by garnishment shall apply; and for his services in executing the warrant the sheriff shall be entitled to the same fees, which he may collect in the same manner.

The department may elect to issue the warrant directly to the circuit clerk of any county of this state for enrollment upon the judgment rolls of the county. In such case, the clerk shall enter in the judgment roll, in the column for judgment debtors, the name of the employer mentioned in the warrant and, in appropriate columns, the amount of contributions, interest and damages for which the warrant is issued, a notation that the lien covers all previous, current and future periods for the life of the lien, and the date when such warrant is filed. The lien shall have the same effect and remedies as that provided by law in respect to executions issued against property upon judgments or in attachment proceedings of a court of record, and the remedies by garnishment shall apply.

All warrants issued by the department for the collection of any unemployment tax or for an overpayment of benefits imposed by statute and collected by the department shall be used to levy on salaries, compensation or other monies due the delinquent employer or claimant. No such warrant shall be issued until after the delinquent employer or claimant has exhausted all appeal rights associated with the debt. The warrants shall be served by mail or by delivery by an agent of the department on the person or entity responsible or liable for the payment of the monies due the delinquent employer or claimant. Once served, the employer or other person owing compensation due the delinquent employer or claimant shall pay the monies over to the department in complete or partial satisfaction of the liability. An answer shall be made within thirty (30) days after service of the warrant in the form and manner determined satisfactory by the department. Failure to pay the money over to the department as required by this section shall result in the served party being personally liable for the full amount of the monies owed and the levy and collection process may be issued against the party in the same manner as other debts owed to the department. Except as otherwise provided by this section, the answer, the amount payable under the warrant and the obligation of the payor to continue payment shall be governed by the garnishment laws of this state but shall be payable to the department.

HISTORY: Codes, 1942, § 7425; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9c; Laws, 1958, ch. 533, § 7c; Laws, 1968, ch. 561, § 3c; Laws, 1995, ch. 507, § 5; Laws, 1996, ch. 464, § 2; Laws, 2000, ch. 508, § 1; Laws, 2013, ch. 309, § 8, eff from and after passage (approved March 6, 2013).

Cross References — Garnishment proceedings, see §§ 11-35-1 et seq.

Executions on judgments, see §§ 13-3-111 et seq.

Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see § 71-5-19.

Deposit or transfer of interest, penalties and damages into special employment security administration fund, see § 71-5-114.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Collection of overpayments due to disqualification for benefits, see § 71-5-513.

RESEARCH REFERENCES

Am. Jur.
76 Am. Jur. 2d, Unemployment Compensation § 9.
24 Am. Jur. Pl & Pr Forms (Rev), Unemployment Compensation, Forms 18, 20, 23, 25.

CJS.
81 C.J.S., Social Security and Public Welfare §§ 352 et seq.

§ 71-5-369. Jeopardy assessment and warrant.

If the commission has just cause to believe and does believe that the collection of contributions from an employer will be jeopardized by delay, it may assess such contributions immediately, together with interest and other amounts provided by this chapter, and may immediately issue a jeopardy warrant under its official seal, directed to the sheriff of any county of said state. The sheriff shall, immediately upon receipt of such jeopardy warrant, file with the clerk of the circuit court of his county a copy thereof, and thereafter both the clerk and the sheriff shall proceed in accordance with the provisions of Section 71-5-367.

HISTORY: Codes, 1942, § 7426; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9d; Laws, 1958, ch. 533, § 7d; Laws, 1968, ch. 561, § 3d, eff from and after July 1, 1968.

Editor's Notes — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see § 71-5-19.

Deposit or transfer of interest, penalties and damages into special employment security administration fund, see § 71-5-114.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Collection of overpayments due to disqualification for benefits, see § 71-5-513.

RESEARCH REFERENCES

CJS.
81 C.J.S., Social Security and Public Welfare §§ 374, 375.

§ 71-5-371. Liability of sheriff for failure to execute warrant.

If any sheriff shall fail to return any warrant directed to him as herein provided on the return day thereof, the commission shall be entitled to recover judgment against the sheriff and the sureties on his official bond for the amount of the warrant and all costs, with lawful interest thereon until paid, together with ten per centum (10%) of the full amount thereof as damages, to be recovered by suit against the sheriff and his sureties by the commission. If any sheriff shall falsely make a nulla bona return on any warrant directed to him as herein provided, the commission shall be entitled to recover judgment against the sheriff and the sureties on his official bond for such amount as he could reasonably have made under such warrant and all costs, together with lawful interest thereon until paid, together with ten per centum (10%) thereon as damages, to be recovered by a suit against the sheriff and his sureties by the commission.

HISTORY: Codes, 1942, § 7427; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9e; Laws, 1958, ch. 533, § 7e; Laws, 1968, ch. 561, § 3e, eff from and after July 1, 1968.

Editor's Notes — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see § 71-5-19.

Deposit or transfer of interest, penalties and damages into special employment security administration fund, see § 71-5-114.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Collection of overpayments due to disqualification for benefits, see § 71-5-513.

§ 71-5-373. Defaulting employer.

An employer liable for contributions under the provisions of this chapter who fails to make and file his returns and reports as required, or who fails to pay any contributions when due under the provisions of this chapter, shall forfeit his right to do business in this state until he complies with all the provisions of this chapter and until he enters into a bond with sureties, to be approved by the commission, in an amount not to exceed all contributions estimated to become due by said employer under the provisions of this chapter for any three-month period, conditioned to comply with the provisions of this chapter, and to pay all contributions legally due or to become due by him. The commission may proceed by injunction to prevent the continuance of said business, and any temporary injunction enjoining the continuance of such business shall be granted without notice by any judge or chancellor now authorized by law to grant injunctions.

HISTORY: Codes, 1942, § 7428; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9f; Laws, 1958, ch. 533, § 7f; Laws, 1968, ch. 561, § 3f, eff from and after July 1, 1968.

Editor's Notes — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Granting injunctions generally, see §§ 11-13-1 et seq.

Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see § 71-5-19.

Deposit or transfer of interest, penalties and damages into special employment security administration fund, see § 71-5-114.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Collection of overpayments due to disqualification for benefits, see § 71-5-513.

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation, §§ 15, 18 et seq.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 374, 375.

§ 71-5-375. Contributions a lien.

The contributions required by this chapter shall be a lien upon the property of any employer subject to its provisions who shall sell out his business or stock of goods, or who shall quit business, or whose property used or acquired in the business shall be sold under voluntary conveyance or under foreclosure, execution, attachment, distraint, or other judicial proceedings. Such employer shall, within ten (10) days before the happening of any of the above contingencies, be required to file such reports as the commission shall prescribe and to pay the contributions required by this chapter with respect to wages payable for employment up to the date of the happening of such contingency. The purchaser or successor in business shall withhold sufficient of the purchase money to cover the amount of contributions due and unpaid, until such time as such employer shall produce a receipt from the commission showing that the contributions have been paid or a certificate that no contributions are due. If such purchaser or successor shall fail to withhold purchase money as above provided, and the contributions shall not be paid within the ten (10) days specified above, such purchaser or successor shall be personally liable for the payment of the contributions accrued and unpaid on account of the operation of the business by the former owner.

HISTORY: Codes, 1942, § 7429; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9g; Laws, 1958, ch. 533, § 7g; Laws, 1968, ch. 561, § 3g; Laws, 1983, ch. 362, eff from and after passage (approved March 16, 1983).

Editor's Notes — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see § 71-5-19.

Deposit or transfer of interest, penalties and damages into special employment security administration fund, see § 71-5-114.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Collection of overpayments due to disqualification for benefits, see § 71-5-513.

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation § 17.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 370-372.

§ 71-5-377. Priorities under legal dissolutions or distributions.

In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter due shall be paid in full prior to all other claims except taxes, but on a parity with claims for wages of not more than Two Hundred and Fifty Dollars ($250.00) to each claimant, earned within six (6) months of the commencement of the proceedings. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposals, or composition under the Federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided therein for taxes due and owing this state.

HISTORY: Codes, 1942, § 7430; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9h; Laws, 1958, ch. 533, § 7h; Laws, 1968, ch. 561, § 3h, eff from and after July 1, 1968.

Editor's Notes — The Federal Bankruptcy Act of 1898 (Pub. L. No. 55-541, 30 Stat. 544 (1898), codified at 11 USCS §§ 1 et seq.), referred to in this section, was repealed by the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (1978). For present provisions relating to priorities, see 11 USCS § 507.

Cross References — Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see § 71-5-19.

Deposit or transfer of interest, penalties and damages into special employment security administration fund, see § 71-5-114.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Collection of overpayments due to disqualification for benefits, see § 71-5-513.

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation § 17.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 370-372.

§ 71-5-379. Collection by suit.

If, after due notice, an employer defaults in any payment of contributions or interest thereon, the amount due may be collected by civil action in the name of the commission, and this remedy shall be in addition to such other remedies as may be herein provided or otherwise provided by law. An employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review of claims for benefits under this chapter.

HISTORY: Codes, 1942, § 7431; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412,

§ 9i; Laws, 1956, ch. 533, § 7i; Laws, 1968, ch. 561, § 3k, eff from and after July 1, 1968.

Editor's Notes — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see § 71-5-19.

Deposit or transfer of interest, penalties and damages into special employment security administration fund, see § 71-5-114.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Collection of overpayments due to disqualification for benefits, see § 71-5-513.

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation §§ 9, 10, 17, 88.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 373 et seq.

§ 71-5-381. No injunction allowed to restrain collection.

No injunction shall be awarded by any court or judge to restrain the collection of contributions required by this chapter or to restrain the enforcement of this chapter. The provisions of section 11-13-11, shall not apply to contributions required by this chapter.

HISTORY: Codes, 1942, § 7432; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9j; Laws, 1958, ch. 533, § 7j; Laws, 1968, ch. 561, § 3j, eff from and after July 1, 1968.

Cross References — Restraint of collection of certain taxes, see § 11-13-11.

Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see § 71-5-19.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Collection of overpayments due to disqualification for benefits, see § 71-5-513.

§ 71-5-383. Refunds.

The commission is authorized and empowered to refund, without interest, such contributions, interest, and penalties as it may determine were paid erroneously by an employer, or may make or authorize an adjustment thereof in connection with subsequent contribution payments, provided the employer shall make written application for such refund or adjustment within three (3) years to the last day of the calendar year in which the services of individuals in employment, with respect to which such contributions were erroneously paid, were performed. For like cause and within the same period, adjustment or refund may be made on the commission's own initiative.

HISTORY: Codes, 1942, § 7433; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412,

§ 9k; Laws, 1958, ch. 533, § 7k; Laws, 1968, ch. 561, § 3k, eff from and after July 1, 1968.

Editor's Notes — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Refunds to instrumentalities of the United States of payments into unemployment funds, under certain conditions, see § 71-5-11.

Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see § 71-5-19.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Payment of refunds pursuant to this section from clearing account in unemployment compensation fund, see § 71-5-453.

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation § 15.

24 Am. Jur. Pl & Pr Forms (Rev), Unemployment Compensation, Forms 23, 25, 52, 53.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 377, 378.

§ 71-5-385. Requesting permission to file reports in special format; regulations; penalty.

Any employer may request permission to file unemployment compensation wage and contribution reports in a special format. If the request is approved by the commission, the employer must file the wage and contribution reports in accordance with regulations established by the commission. Failure to follow established regulations may result in a penalty of up to Five Hundred Dollars ($500.00) each calendar quarter for each employer connected with the report.

HISTORY: Laws, 1998, ch. 491, § 3, eff from and after July 2, 1998.

Editor's Notes — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

§ 71-5-387. Contributions to the unemployment compensation fund by certain Indian tribes under Federal Unemployment Tax Act.

(1) Indian tribe(s) as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe(s), subject to this chapter shall pay contributions under the same terms and conditions as all other subject employers, unless such Indian tribe elects to pay into the State Unemployment Fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

(2) Tribal unit(s) means any subdivision, subsidiary or business enterprise wholly owned by any Indian tribe as defined in Section 3306(u) of the

Federal Unemployment Tax Act (FUTA) or any combination of any such subdivisions, subsidiaries or business enterprises wholly owned by such Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA).

(3) Indian tribes electing to make payments in lieu of contributions must make such election in the same manner and under the same conditions as provided in Section 71-5-357 pertaining to nonprofit organizations subject to this chapter, except the tribe may determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units or by combinations of individual tribal units. Any tribal unit not making such election, shall pay contributions as described in Sections 71-5-351 through 71-5-355.

(4) Payments in lieu of contributions shall be made in accordance with the provisions of Section 71-5-357.

(5) Failure of the Indian tribe or tribal unit to post any bond as required by this chapter or to make payments in lieu of contributions if so elected by the tribe or tribal unit, as provided in subsection (3) of this section, including assessments of interest and penalty, within ninety (90) days of mailing or transmittal of the first delinquency notice to the last known address, shall cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in Section 71-5-357, for the following tax year, unless payment in full is received before January 1 of the next tax year.

(6) Any Indian tribe that loses the option to make payments in lieu of contributions, as provided in subsection (5) of this section, may have such options reinstated if, after a period of one (1) year, all contributions have been made timely and no contributions, payments in lieu of contributions for benefits paid, penalties or interest remain unpaid.

(7) Failure of the Indian tribe or any tribal unit thereof to make required payments, reimbursements or contributions whichever may apply, including assessments of interest and penalty, after all collection activities deemed necessary by the commission have been exhausted, may cause services performed for such tribe to not be treated as "employment" for purposes of Section 71-5-11.

(8) If any Indian tribe fails to post any bond as required by this chapter or make payments required under this chapter, including contributions, reimbursements or assessments of interest and penalty, within ninety (90) days of the mailing or transmittal of a final notice, the commission shall immediately notify the United States Internal Revenue Service and the United States Department of Labor.

(9) The commission may determine that any Indian tribe that loses coverage under subsection (7) of this section, may again have services performed for such tribe included as "employment" for purposes of Section 71-5-11 if all contributions, payments in lieu of contributions, penalties and interest have been paid.

(10) Notices of payment and reporting delinquency to any Indian tribe or tribal unit shall include information that failure to make full payment within the prescribed time frame:

(a) Shall cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act (FUTA);

(b) Shall cause the Indian tribe to lose the option to make payments in lieu of contributions;

(c) May cause the Indian tribe to be excepted from the definition of "employer," as provided in Section 71-5-11, and services in the employ of the Indian tribe, as provided in Section 71-5-11, to be excepted from "employment."

(11) Benefits based on service performed in employment with an Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe, shall be payable in the same amount, on the same terms and subject to the same conditions, as benefits payable on the basis of other service subject to this chapter.

(12) Extended benefits paid that are attributable to service in the employ of an Indian tribe, and not reimbursed by the federal government, shall be financed in their entirety by such Indian tribe.

(13) Any non-FUTA exclusions, that are by reference included in this section, shall not apply to Indian tribes if federal law requires coverage of such services.

HISTORY: Laws, 2002, ch. 562, § 3, eff from and after July 1, 2002.

Editor's Notes — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

§ 71-5-389. Setoff against tax refunds for debts owed to Mississippi Department of Employment Security; submission of debts to Department of Revenue; notice to debtor; transfer of funds to Department of Revenue; hearings; appeals; confidentiality.

(1) For the purposes of this section, the following terms shall have the respective meanings ascribed by this section:

(a) "Claimant agency" means the Mississippi Department of Employment Security.

(b) "Debtor" means any individual, corporation or partnership owing money or having a delinquent account with any claimant agency, which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy.

(c) "Debt" means any sum due and owing any claimant agency, including costs, court costs, fines, penalties and interest which have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made.

(d) "Department" or "Department of Revenue," or "Revenue" means the Department of Revenue of the State of Mississippi.

(e) "Refund" means the Mississippi income tax refund or federal income tax refund which the department determines to be due any individual taxpayer, corporation or partnership.

(f) "Treasury" means the United States Department of the Treasury.

(2) The collection remedy authorized by this section is in addition to and is not substitution for any other remedy available by law.

(3)(a) A claimant agency may submit debts in excess of Twenty-five Dollars ($25.00) owed to it to the department for collection through setoff, under the procedure established by this section, except in cases where the validity of the debt is legitimately in dispute, an alternate means of collection is pending and believed to be adequate, or such collection would result in a loss of federal funds or federal assistance.

(b) Upon the request of a claimant agency, the department or, if applicable, Treasury shall set off any refund, as defined herein, against the sum certified by the claimant agency as provided in this section.

(4)(a) Within the time frame specified by the department and/or Treasury, a claimant agency seeking to collect a debt through setoff shall supply the information necessary to identify each debtor whose refund is sought to be set off and certify the amount of debt or debts owed by each such debtor.

(b) If a debtor identified by a claimant agency is determined by the department and/or Treasury to be entitled to a refund of at least Twenty-five Dollars ($25.00), the department or, if applicable, Treasury shall transfer an amount equal to the refund owed, not to exceed the amount of the claimed debt certified, to the claimant agency. The Department of Revenue or, if applicable, Treasury shall send the excess amount to the debtor within a reasonable time after such excess is determined. At the time of the transfer of funds to a claimant agency pursuant to this paragraph (b), the Department of Revenue or, if applicable, Treasury shall notify the taxpayer or taxpayers whose refund is sought to be set off that the transfer has been made. Such notice shall clearly set forth the name of the debtor, the manner in which the debt arose, the amount of the claimed debt, the transfer of funds to the claimant agency pursuant to this paragraph (b) and the intention to set off the refund against the debt, the amount of the refund in excess of the claimed debt, the taxpayer's opportunity to give written notice to contest the setoff within thirty (30) days of the date of mailing of the notice, the name and mailing address of the claimant agency to which the application for such a hearing must be sent, and the fact that the failure to apply for such a hearing, in writing, within the thirty-day period will be deemed a waiver of the opportunity to contest the setoff. In the case of a joint return or a joint refund, the notice shall also state the name of the taxpayer named in the return, if any, against whom no debt is claimed, the fact that a debt is not claimed against such taxpayer, the fact that such taxpayer is entitled to receive a refund if it is due him or her regardless of the debt asserted against his or her spouse, and that in order to obtain a refund due him or her such taxpayer must apply in writing for a hearing with the claimant agency named in the notice within thirty (30) days of the date of the mailing of the notice. If a taxpayer fails to apply in writing for such a hearing within thirty (30) days of the mailing of such notice, he or she will have waived his or her opportunity to contest the setoff.

(c) Upon receipt of funds transferred from the Department of Revenue and/or Treasury pursuant to paragraph (b) of this subsection, the claimant agency shall deposit and hold such funds in an escrow account until a final determination of the validity of the debt.

(d) The claimant agency shall pay the Department of Revenue and/or Treasury a fee, not to exceed Seventeen Dollars ($17.00) in each case in which a tax refund is identified as being available for offset. Such fees shall be deposited by the Department of Revenue into a special fund hereby created in the State Treasury, out of which the Legislature shall appropriate monies to defray expenses of the Department of Revenue in employing personnel to administer the provisions of this section.

(5)(a) When the claimant agency receives a protest or an application in writing from a taxpayer within thirty (30) days of the notice issued by the Department of Revenue and/or Treasury, the claimant agency shall set a date to hear the protest and give notice to the taxpayer through the United States Postal Service or electronic digital transfer of the date so set. The time and place of such hearing shall be designated in such notice and the date set shall not be less than fifteen (15) days from the date of such notice. If, at the hearing, the sum asserted as due and owing is found not to be correct, an adjustment to the claim may be made. The claimant agency shall give notice to the debtor of its final determination as provided in paragraph (c) of this subsection.

(b) No issues shall be reconsidered at the hearing which have been previously litigated.

(c) If any debtor is dissatisfied with the final determination made at the hearing by the claimant agency, he or she may appeal the final determination to the circuit court of the county in which the main office of the claimant agency is located by filing notice of appeal with the administrative head of the claimant agency and with the clerk of the circuit court of the county in which the appeal shall be taken within thirty (30) days from the date the notice of final determination was given by the claimant agency.

(6)(a) Upon final determination of the amount of the debt due and owing by means of hearing or by the taxpayer's default through failure to comply with timely request for review, the claimant agency shall remove the amount of the debt due and owing from the escrow account and credit such amount to the debtor's obligation.

(b) Upon transfer of the debt due and owing from the escrow account to the credit of the debtor's account, the claimant agency shall notify the debtor in writing of the finalization of the setoff. Such notice shall include a final accounting if the refund which was set off, including the amount of the refund to which the debtor was entitled before the setoff, the amount of the debt due and owing, the amount of the collection fee paid to the Department of Revenue and/or Treasury, the amount of the refund in excess of the debt which was returned to the debtor by the Department of Revenue and/or Treasury, and the amount of the funds transferred to the claimant agency in excess of the debt determined to be due and owing at a hearing, if such a hearing was held. At such time, the claimant agency shall refund to the debtor the amount of the claimed debt originally certified and transferred to it by the Department of Revenue in excess of the amount of debt finally found to be due and owing.

(7)(a) Notwithstanding the provision that prohibits disclosure by the Department of Revenue and/or Treasury of the contents of taxpayer records or information and notwithstanding any other confidentiality statute, the Department of Revenue and/or Treasury may provide to a claimant agency all information necessary to accomplish and effectuate the intent of the section.

(b) The information obtained by claimant agency from the Department of Revenue and/or Treasury in accordance with the provisions of this section shall retain its confidentiality and shall only be used by a claimant agency in the pursuit of its debt collection duties and practices; and any employee or prior employee of any claimant agency who unlawfully discloses any such information for any other purpose, except as specifically authorized by law, shall be subject to the same penalties specified by law for unauthorized confidential information by an agent or employee of the Department of Revenue and/or Treasury.

HISTORY: Laws, 2005, ch. 400, § 2; Laws, 2009, ch. 492, § 138; Laws, 2013, ch. 309, § 9, eff from and after passage (approved March 6, 2013); Laws, 2021, ch. 360, § 4, eff from and after July 1, 2021.

Editor's Notes — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Amendment Notes — The 2021 amendment, inserted "and/or Treasury" and made gender neutral changes throughout the section; in (1), inserted "or Revenue" in (d), inserted "or federal income tax refund" in (e), and added (f); in (3)(b), inserted "or, if applicable, Treasury"; in (4)(b), inserted "or, if applicable, Treasury" three times; and in (6)(b), substituted "before the setoff" for "prior to the setoff."

Cross References — Department of revenue generally, see § 27-3-1 et seq.

Commissioner of revenue of the department of revenue, see §§ 27-3-3, 27-3-4.

§ 71-5-391. Use of administrative funds for payment of fees associated with receipt of electronic payments.

The executive director of the department may use available administrative funds for payment of fees associated with receipt of electronic payments made to the department. In the event the fees are charged to an employer through a payment process external to the department, amounts not to exceed the charges for the electronic transaction may be credited to the employer and used as an offset to future indebtedness.

HISTORY: Laws, 2007, ch. 606, § 1, eff from and after July 1, 2007.

ARTICLE 9.

UNEMPLOYMENT COMPENSATION FUND.

Sec.

71-5-451. Establishment and control [Repealed effective July 1, 2023].
71-5-453. Accounts and deposits.
71-5-455. Withdrawals.
71-5-457. Unemployment trust fund used for payment of administrative expenses [Repealed effective July 1, 2023].
71-5-459. Management of funds upon discontinuance of unemployment trust fund.

§ 71-5-451. Establishment and control [Repealed effective July 1, 2023].

There is established as a special fund, separate and apart from all public monies or funds of this state, an Unemployment Compensation Fund, which shall be administered by the department exclusively for:

(a) All contributions collected under this chapter;

(b) Interest earned upon any monies in the fund;

(c) Any property or securities acquired through the use of monies belonging to the fund;

(d) All earnings of such property or securities;

(e) All monies credited to this state's account in the Unemployment Trust Fund pursuant to the Social Security Act, 42 USCS, Section 1104; and

(f) By way of reimbursement in accordance with Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 (84 Stat. 711). All monies in the fund shall be mingled and undivided.

HISTORY: Codes, 1942, § 7394; Laws, 1940, ch. 295; Laws, 1958, ch. 536, § 1(a); Laws, 1964, ch. 448, § 1(a); Laws, 1971, ch. 519, § 10; Laws, 1982, ch. 383, § 3; Laws, 2004, ch. 572, § 36; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 36; reenacted without change, Laws, 2010, ch. 559, § 35; reenacted without change, Laws, 2011, ch. 471, § 36; reenacted without change, Laws, 2012, ch. 515, § 36, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 36, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex

Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Reciprocal arrangements for reimbursements from other states or the federal government, see § 71-5-13.

Federal Aspects— The Federal-State Extended Unemployment Compensation Act of 1970, referred to in (f), is the Act of August 10, 1970, P.L. 91-373, 84 Stat. 708, codified at 26 USCS §§ 3304 et seq.

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation § 2.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 330, 346, 347.

§ 71-5-453. Accounts and deposits.

The department shall be the treasurer and custodian of the fund, and shall administer such fund in accordance with the directions of the department, and shall issue its warrants upon it in accordance with such regulations as the department shall prescribe. The department shall maintain within the fund three (3) separate accounts: (a) a clearing account, (b) an unemployment trust fund account, and (c) a benefit payment account. All monies payable to the fund, upon receipt thereof by the department, shall be immediately deposited in the clearing account. Refunds payable pursuant to Section 71-5-383 may be paid from the clearing account by the department. Transfers pursuant to Section 71-5-114 of all interest, penalties and damages collected shall be made to the Special Employment Security Administration Fund as soon as practicable after the end of each calendar quarter. Workforce Enhancement Training contributions, State Workforce Investment contributions and Mississippi Works contributions shall be deposited into the Workforce Investment and Training Holding Account as described in this section. All other monies in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States of America to the Unemployment Trust Fund account for the State of Mississippi, established and maintained pursuant to Section 904 of the Social Security Act, as amended, any provisions of law in this state relating to the deposit, administration, release or disbursement of monies in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all monies requisitioned from this state's account in the Unemployment Trust Fund. Except as herein otherwise provided, monies in the clearing and benefit accounts may be deposited by the department, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The department shall be liable for the faithful performance of its duties in connection with the Unemployment Compensation Fund under this chapter. A Workforce Investment and Training Holding Account shall be established by and maintained under the control of the Mississippi Department of Employment Security. Contributions collected pursuant to the provisions in this chapter for the Workforce Enhancement Training Fund, State Workforce Investment Fund and the Mississippi Works Fund shall be transferred from the clearing account into the Workforce Investment and Training Holding Account on the same schedule and under the same conditions as funds transferred to the Unemployment Compensation Fund. Such funds shall remain on deposit in the holding account for a period of thirty (30) days. After such period, Workforce Enhancement Training contributions shall be transferred to the appropriate Mississippi Community College Board Treasury Account, with oversight provided by the Mississippi Office of Workforce Development, by the department. The State Workforce Investment contributions shall be transferred to the State Workforce Investment Board bank account established by the department, and the department shall have the authority to deposit and disburse funds from the State Workforce Investment Board bank account as directed by the State Workforce Investment Board. The Mississippi Works contributions shall be transferred to the Mississippi Department of Employment Security Treasury Account for the Mississippi Works Fund. Such transfers shall occur within fifteen (15) days after the funds have resided in the Workforce Investment and Training Holding Account for thirty (30) days. One (1) such transfer shall be made monthly, but the department, in its discretion, may make additional transfers in any month. In the event such funds transferred are subsequently determined to be erroneously paid or collected, or if deposit of such funds is denied or rejected by the banking institution for any reason, or deposits are unable to clear drawer's account for any reason, the funds must be reimbursed by the recipient of such funds within thirty (30) days of mailing of notice by the department demanding such refund, unless funds are available in the Workforce Investment and Training Holding Account. In that event such amounts shall be immediately withdrawn from the Workforce Investment and Training Holding Account by the department and redeposited into the clearing account.

HISTORY: Codes, 1942, § 7395; Laws, 1940, ch. 295; Laws, 1958, ch. 536, § 1(b); Laws, 1964, ch. 448, § 1(b); Laws, 1982, ch. 383, § 4; Laws, 2005, ch. 437, § 3; Laws, 2013, ch. 309, § 10; Laws, 2014, ch. 504, § 3; Laws, 2016, ch. 302, § 3, eff from and after passage (approved Mar. 21, 2016); Laws, 2020, ch. 476, § 6, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in the fourteenth sentence, inserted "with oversight provided by the Mississippi Office of Workforce Development."

Cross References — Reimbursements for benefits paid under reciprocal arrangements with other states and the federal government, see § 71-5-13.

Federal Aspects— Section 904 of the Social Security Act, see 42 USCS § 1104.

§ 71-5-455. Withdrawals.

Monies shall be requisitioned from this state's account in the Unemployment Trust Fund solely for the payment of benefits and in accordance with regulations prescribed by the department, except that monies credited to this state's account pursuant to Section 903 of the Social Security Act, as amended, shall be used exclusively as provided in Section 71-5-457. No monies in the Unemployment Compensation Fund shall be used to pay interest on any funds that might be borrowed for the purposes of this chapter, but any such interest that might be due shall be paid from other sources. The department shall from time to time requisition from the Unemployment Trust Fund such amounts, not exceeding the amount standing to this state's account therein, as it deems necessary for the payment of benefits for a reasonable future period. Such sums shall be immediately deposited by the department in some bank within this state in an account to be known as the "benefit payment account," which shall be under the control of the department and on which said benefit payment account the department or its duly authorized representative is authorized to draw and issue its checks in payment of benefits to individuals entitled thereto under this chapter. Expenditures of such monies in the benefit account and benefit payment account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants shall bear the signature of the department's duly authorized agent for that purpose.

The department shall be subject to the applicable laws pertaining to security of public fund deposits as set forth in Sections 27-105-5 and 27-105-6.

HISTORY: Codes, 1942, § 7396; Laws, 1940, ch. 295; Laws, 1958, ch. 536, § 1(c); Laws, 1964, ch. 448, § 1(c); Laws, 1984, ch. 301, § 3; Laws, 1994, ch. 303, § 3; Laws, 2013, ch. 309, § 11, eff from and after passage (approved March 6, 2013).

Cross References — Withdrawals for benefits paid under reciprocal arrangements with other states or the federal government, see § 71-5-13.

Federal Aspects— Section 903 of the Social Security Act, referred to in the first paragraph, see 42 USCS § 1103.

OPINIONS OF THE ATTORNEY GENERAL

Section VII of the standardized Collateral Security Agreement does not authorize a violation of 71-5-455; it simply provides a maximum time for the correction of any breach of this statutory requirement. Lord, May 25, 1995, A.G. Op. #95-0159.

§ 71-5-457. Unemployment trust fund used for payment of administrative expenses [Repealed effective July 1, 2023].

(1) Except as otherwise provided in subsection (5), money credited to the account of this state in the Unemployment Trust Fund by the Secretary of the Treasury of the United States of America pursuant to the Social Security Act, 42 USCS Section 1103, may be requisitioned and used for the payment of expenses incurred for the administration of this law pursuant to a specific appropriation by the Legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) Limits the period within which such money may be obligated to a period ending not more than two (2) years after the date of the enactment of the appropriation law; and

(c) Limits the amount which may be obligated during a twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which:

(i) The aggregate of the amounts credited to the account of this state pursuant to the Social Security Act, 42 USCS Section 1103, during the same twelve-month period and the thirty-four (34) preceding twelve-month periods exceeds.

(ii) The aggregate of the amounts obligated pursuant to this section and charged against the amounts credited to the account of this state during such thirty-five (35) twelve-month periods.

For the purposes of this section, amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during any such twelve-month period may be charged against any amount credited during such a twelve-month period earlier than the thirty-fourth preceding such period.

(2) Money credited to the account of this state pursuant to the Social Security Act, 42 USCS Section 1103, may not be withdrawn or used except for the payment of benefits and for the payment of expenses for the administration of this law and of public employment offices pursuant to this section.

(3) Money appropriated as provided herein for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition, shall be deposited in the Employment Security Administration Fund, from which such payments shall be made. Money so deposited shall, until expended, remain a part of the Unemployment Compensation Fund and, if it will not be expended, shall be returned promptly to the account of this state in the Unemployment Trust Fund.

(4) The thirty-five-year limitation provided in this section is no longer in force, effective October 1, 1991.

(5) Notwithstanding subsection (1), monies credited with respect to federal fiscal years 1999, 2000 and 2001 shall be used by the department solely for the administration of the unemployment compensation program.

HISTORY: Codes, 1942, § 7396.5; Laws, 1958, ch. 536, § 1(d); Laws, 1964, ch. 448, § 1(d); Laws, 1971, ch. 519, § 11; Laws, 1975, ch. 393; Laws, 1981, ch. 321, § 1; Laws, 1983, ch. 357; Laws, 1984, ch. 301, § 4; Laws, 1991, ch. 449 § 1; Laws, 1998, ch. 372, § 1; Laws, 2004, ch. 572, § 37; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 37; reenacted without change, Laws, 2010, ch. 559, § 36; reenacted without change, Laws, 2011, ch. 471, § 37; reenacted without change, Laws, 2012, ch. 515, § 37, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 37, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Employment security administration fund, see § 71-5-111.

Definition of "reserve ratio" with respect to exclusion of moneys appropriated for expenses of administration pursuant to this section, see § 71-5-355.

§ 71-5-459. Management of funds upon discontinuance of unemployment trust fund.

The provisions of Sections 71-5-451 through 71-5-459, to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes and of money credited pursuant to Section 903 of the Social Security Act, as amended, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist or such separate book account is no longer maintained, all moneys, properties, or securities therein belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the commission, in accordance with the provisions of this chapter, provided that such moneys shall be invested in the following readily marketable classes of securities: bonds or other interest bearing obligations of the United States of America, the State of Mississippi, and of any county; consolidated school district, supervisors district road bonds, and municipal bonds of counties, cities, and towns of Mississippi; federal land bank bonds and home owners loan corporation bonds; Yazoo and Mississippi Delta Levee District bonds; Mississippi Levee District bonds; municipal bonds of cities with a population of one hundred thousand (100,000) and over located in the states of Louisiana, Texas, Arkansas, Alabama, Georgia, Florida, and Tennessee; and provided further that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under direction of the commission.

HISTORY: Codes, 1942, § 7397; Laws, 1940, ch. 295; Laws, 1958, ch. 536, § 1(e); Laws, 1964, ch. 448, § 1(e), eff from and after passage (approved June 6, 1964).

Cross References — Receipt or payment of reimbursements under reciprocal arrangements with other states or the federal government, see § 71-5-13.

Federal Aspects— Section 903 of the Social Security Act, see 42 USCS § 1103.

ARTICLE 11.

BENEFITS.

Sec.

71-5-501. Payment.
71-5-503. Weekly benefit amount.
71-5-505. Weekly compensation for unemployment.
71-5-506. Advice to claimants as to taxation of benefits; change of withholding status; deduction and withholding of tax.
71-5-507. Duration.
71-5-509. Seasonal workers.
71-5-511. Eligibility conditions [Repealed effective July 1, 2023].
71-5-513. Disqualifications [Repealed effective July 1, 2023].
71-5-515. Filing.
71-5-516. Disclosure of child support obligations on claim for benefits; deduction and withholding from benefit.
71-5-517. Initial determination [Repealed effective July 1, 2023].
71-5-519. Appeals [Repealed effective July 1, 2023].
71-5-521. Appeal tribunals.
71-5-523. Board of review [Repealed effective July 1, 2023].
71-5-525. Procedure [Repealed effective July 1, 2023].
71-5-527. Witness fees.
71-5-529. Appeal to courts [Repealed effective July 1, 2023].
71-5-531. Court review [Repealed effective July 1, 2023].
71-5-533. Appeal by commission.
71-5-535. Waiver of rights void.
71-5-537. Limitation of fees.
71-5-539. No assignment of benefits; exemptions.
71-5-541. Construction [Repealed effective July 1, 2023].
71-5-543. Authorization to waive recovery of benefits paid to ineligible persons under certain circumstances.
71-5-545. Self-Employment Assistance Program.

§ 71-5-501. Payment.

Wages earned for services defined in Section 71-5-11(I)(15)(g), irrespective of when performed, shall not be included for purposes of determining eligibility under Section 71-5-511(e) or weekly benefit amount under Section 71-5-503 nor shall any benefits with respect to unemployment be payable under Section 71-5-505 on the basis of such wages. All benefits shall be paid through employment offices or such other agency or agencies as the department may, by regulation, designate, in accordance with such regulations as the department may prescribe. The department may, by regulation, prescribe that benefits due and payable to claimants who die prior to the receipt or cashing of benefits checks may be paid to the legal representative, dependents, or next of kin, of the deceased as may be found by it to be equitably entitled thereto, and every such payment shall be deemed a valid payment to the same extent as if made to the legal representative of the decedent.

HISTORY: Codes, 1942, § 7373; Laws, 1940, ch. 295, § 1; Laws, 1948, ch. 412, § 2a; Laws, 1952, ch. 383, § 1a; Laws, 1956, ch. 404, § 1a; Laws, 1958, ch. 533,

§ 1a; Laws, 1968, ch. 561, § 1a; Laws, 1971, ch. 519, § 1; Laws, 2002, ch. 562, § 4; Laws, 2013, ch. 309, § 17, eff from and after passage (approved March 6, 2013).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in the first sentence. The reference to "Section 71-5-11(H)(15)(g)" was changed to "Section 71-5-11(I)(15)(g)." The Joint Committee ratified the correction at its August 1, 2013, meeting.

Cross References — Payments made under reciprocal arrangements with other states or the federal government, see § 71-5-13.

Disqualification for benefits, see § 71-5-513.

JUDICIAL DECISIONS

1. In general.

An employee who is terminated without pay after indicating his or her intent to resign may be considered discharged and eligible for state unemployment benefits. Coleman v. Mississippi Employment Sec. Comm'n, 662 So. 2d 626, 1995 Miss. LEXIS 496 (Miss. 1995).

RESEARCH REFERENCES

ALR.

Repayment of unemployment compensation benefits erroneously paid. 90 A.L.R.3d 987.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 353, 508.

Practice References.

E. Thomas Veal, Employee Benefits Guide (Matthew Bender).

Janice Goodman, Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

§ 71-5-503. Weekly benefit amount.

An individual's weekly benefit amount for a benefit year shall be one-twenty-sixth (126) of his total wages for insured work paid during that quarter of his base period in which such total wages were highest, computed to the next lower multiple of One Dollar ($1.00), if not a multiple of One Dollar ($1.00).

On or before June 15 of each year, the total wages reported on contribution reports for the preceding calendar year shall be divided by the average monthly number of insured workers (determined by dividing the total insured workers reported on contribution reports pursuant to the regulations of the department for the preceding year by twelve (12)). The average annual wage thus obtained shall be divided by fifty-two (52) and the average weekly wage thus determined rounded to the nearest cent. Sixty percent (60%) of this amount, rounded to the nearest dollar, shall constitute the maximum "weekly benefit amount" paid to any individual whose benefit year commences on or after July 1 of such year and prior to July 1 of the next following year; provided however, that the maximum weekly benefit amount shall not exceed Two Hundred Ten Dollars ($210.00) for any benefit year that begins on or after July 1, 2002, and shall not exceed Two Hundred Thirty Dollars ($230.00) for any benefit year that begins on or after July 1, 2008, and shall not exceed Two Hundred Thirty-five Dollars ($235.00) for any benefit year that begins on or after July 1, 2009. The minimum weekly benefit amount for the individual shall be Thirty Dollars ($30.00). If an individual's weekly benefit amount would compute to less than the said minimum, then such individual would be entitled to no benefits.

An individual's weekly benefit amount, as determined at the beginning of his benefit year, shall constitute his weekly benefit amount throughout such benefit year.

The Mississippi Department of Employment Security, with the assistance of the United States Department of Labor, is directed to generate actuarially sound models for computation of weekly benefit amounts. Such models shall include scenarios for increasing the weekly benefit amounts at each increment from the minimum to the maximum amount and the impact such increments would have on the Unemployment Compensation Fund. Such report shall be provided to the Mississippi Legislature on or before December 31, 2008.

HISTORY: Codes, 1942, § 7374; Laws, 1940, ch. 295, § 1; Laws, 1948, ch. 412, § 2b; Laws, 1952, ch. 383, § 1b; Laws, 1956, ch. 404, § 1b; Laws, 1958, ch. 533, § 1b; Laws, 1968, ch. 561, § 1b; Laws, 1971, ch. 519, § 2; Laws, 1974, ch. 570, § 1; Laws, 1976, ch. 382; Laws, 1979, ch. 465, § 3; Laws, 1982, ch. 349, § 2; Laws, 1983, ch. 364, § 1; Laws, 1984, ch. 438; Laws, 1986, ch. 316, § 1; Laws, 1988, ch. 322, § 2; Laws, 1991, ch. 511, § 3; Laws, 1995, ch. 507, § 6; Laws, 1998, ch. 423, § 1; Laws, 2001, ch. 413, § 1; Laws, 2008, 1st Ex Sess, ch. 43, § 1; reenacted and amended, Laws, 2010, ch. 559, § 37; Laws, 2011, ch. 471, § 38; Laws, 2012, ch. 515, § 38, eff from and after July 1, 2012.

Cross References — Computation of benefits under reciprocal arrangements with other states or the federal government, see § 71-5-13.

Exclusion of jury duty pay and "inactive duty training" compensation and "unit training assembly" compensation payable to member of any reserve component from computation of weekly unemployment benefits, see § 71-5-505.

JUDICIAL DECISIONS

1. In general.

A woman who, pursuant to an agreement with her employer, left work temporarily to have a baby, and who was laid off during that period due to a lack of work, did not leave work voluntarily without good cause within the meaning of § 71-5-513. Smith v. Mississippi Employment Sec. Comm'n, 344 So. 2d 137, 1977 Miss. LEXIS 2425 (Miss. 1977).

The purpose of this statute is not to protect persons self-employed, and only wage earners can become eligible for unemployment compensation benefits. Mississippi Employment Sec. Com. v. Medlin, 252 Miss. 146, 171 So. 2d 496, 1965 Miss. LEXIS 1085 (Miss. 1965).

RESEARCH REFERENCES

CJS.

81 C.J.S., Social Security and Public Welfare § 510.

§ 71-5-505. Weekly compensation for unemployment.

(1) For weeks beginning on or after July 1, 1991, each eligible individual who is totally unemployed or part totally unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of his wages, if any, payable to him with respect to such week which is in excess of Forty Dollars ($40.00). Such individuals must have been totally unemployed or part totally unemployed for a waiting period of one (1) week during which he earned less than his weekly benefit amount plus Forty Dollars ($40.00). Such benefit for a benefit year effective on or after October 1, 1983, if not a multiple of One Dollar ($1.00), shall be computed to the next lower multiple of One Dollar ($1.00). Provided, however, that remuneration for "inactive duty training" or "unit training assembly" payable to such eligible individual who is a member of any of the reserve components, or remuneration for jury duty pursuant to a lawfully issued summons therefor payable to such eligible individual, shall not be considered wages which serve to reduce the otherwise payable benefit amount.

In determining whether an eligible individual is unemployed during a week, the date of commencing a shift shall determine the week for which the earnings are deducted.

(2) However, the one-week waiting period described herein shall be waived if the President of the United States declares a major disaster with regard to individual assistance in accordance with Section 401 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act. The department, in its discretion, shall have the authority to noncharge an employer account for any benefits paid for unemployment due directly to such disaster, but only in those counties and/or areas identified by the disaster area for individual assistance.

HISTORY: Codes, 1942, § 7375; Laws, 1940, ch. 295, § 1; Laws, 1948, ch. 412, § 2c; Laws, 1952, ch. 383, § 1c; Laws, 1956, ch. 404, § 1c; Laws, 1958, ch. 533, § 1c; Laws, 1968, ch. 561, § 1c; Laws, 1979, ch. 381; Laws, 1983, ch. 364, § 2; Laws, 1984, ch. 498, § 1; Laws, 1991, ch. 511, § 4; Laws, 1999, ch. 306, § 1; Laws, 2007, ch. 606, § 12; Laws, 2013, ch. 309, § 12, eff from and after passage (approved March 6, 2013).

Cross References — Definition of "unemployed," as used in this chapter, referenced to weekly benefit amount as computed and adjusted in this section, see § 71-5-11.

Federal Aspects— Federal Unemployment Tax Act – credits against tax; approval of state laws, 26 USCS §§ 3302, 3304.

Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in (2), is Act May 22, 1974, P.L. 93-288, 88 Stat. 143, which is codified generally as 42 USCS §§ 5121 et seq.

JUDICIAL DECISIONS

1. In general.

Employment was not a prerequisite to deducting monies earned by a person during any week in which the person received benefits, and unemployment benefits claimant's bi-weekly payments for service as a part-time alderman constituted wages under Miss Code Ann. § 71-5-11 P(1), which wages should have been deducted from the benefits under Miss Code

Ann. § 71-5-505(1). Miss. Empl. Sec. Comm'n v. Jones, 826 So. 2d 77, 2002 Miss. LEXIS 284 (Miss. 2002).

A woman who, pursuant to an agreement with her employer, left work temporarily to have a baby, and who was laid off during that period due to a lack of work, did not leave work voluntarily without good cause within the meaning of § 71-5-513. Smith v. Mississippi Employment Sec. Comm'n, 344 So. 2d 137, 1977 Miss. LEXIS 2425 (Miss. 1977).

RESEARCH REFERENCES

ALR.

Part-time or intermittent workers as covered by or as eligible for benefits under state unemployment compensation act. 95 A.L.R.3d 891.

CJS.

81 C.J.S., Social Security and Public Welfare § 510.

§ 71-5-506. Advice to claimants as to taxation of benefits; change of withholding status; deduction and withholding of tax.

(1) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, be advised that:

(a) Unemployment compensation is subject to federal, state and local income tax;

(b) Requirements exist pertaining to estimated tax payments;

(c) The individual may elect to have federal and state income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in the Federal Internal Revenue Code and Chapter 7, Title 27, Mississippi Code of 1972;

(d) The individual shall be permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the federal or state taxing authority as a payment of income tax.

(3) The commission shall follow all procedures specified by the United States Department of Labor, the Federal Internal Revenue Service and the Mississippi Department of Revenue pertaining to the deducting and withholding of income tax.

(4) Amounts shall be deducted and withheld in accordance with the priorities established in regulations developed by the commission.

HISTORY: Laws, 1996, ch. 464, § 1, eff from and after July 1, 1996; Laws, 2021, ch. 322, § 1, eff from and after July 1, 2021.

Editor's Notes — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Amendment Notes — The 2021 amendment, in (1)(c), inserted "and state" and added "and Chapter 7, Title 27, Mississippi Code of 1972"; in (2), inserted "or state"; and in (3), inserted "and the Mississippi Department of Revenue" and made a related change.

§ 71-5-507. Duration.

Any otherwise eligible individual shall be entitled during any benefit year to a total amount of regular benefits equal to twenty-six (26) times his weekly benefit amount or one-third (⅓) of his total wages for insured work paid during his base period, whichever is the lesser. Provided, that for a benefit year effective prior to October 1, 1983, if such total amount of benefits is not a multiple of One Dollar ($1.00), it shall be computed to the next higher multiple of One Dollar ($1.00); and for a benefit year effective on or after October 1, 1983, if such total amount of benefits is not a multiple of One Dollar ($1.00), it shall be computed to the next lower multiple of One Dollar ($1.00). An individual's total amount of regular benefits as determined at the beginning of his benefit year shall constitute his total amount of regular benefits throughout such benefit year.

HISTORY: Codes, 1942, § 7376; Laws, 1940, ch. 295, § 1; Laws, 1948, ch. 412, § 2d; Laws, 1952, ch. 383, § 1d; Laws, 1956, ch. 404, § 1d; Laws, 1958, ch. 533, § 1d; Laws, 1968, ch. 561, § 1d; Laws, 1971, ch. 519, § 3; Laws, 1983, ch. 364, § 3, eff from and after passage (approved March 16, 1983).

Cross References — Duration of benefits payable under reciprocal arrangements with other states or the federal government, see § 71-5-13.

JUDICIAL DECISIONS

1. In general.

Where evidence amply supported the finding of the commission that an employee who quit her job in a moment of pique during a brief misunderstanding with her employer had quit suitable employment voluntarily and was not entitled to benefits, the court was without statutory authority to enter a contrary judgment. Mississippi Employment Sec. Com. v. Rakestraw, 254 Miss. 56, 179 So. 2d 830, 1965 Miss. LEXIS 923 (Miss. 1965).

§ 71-5-509. Seasonal workers.

(1) For the purposes of this section, cotton ginning and professional baseball only are classified as seasonal industries.

(2) The term "seasonal worker" means an individual who is employed in a seasonal industry, and who has base period wages paid on and after July 1, 1983, in such seasonal industry, except that the term shall not include workers in such industry where employment continues substantially throughout the year. Any individual who has earnings in a seasonal industry having a seasonal operating period within the limits shown in the first column at the end of this subsection, and who has base period wages earned in such seasonal industry in the nonoperating season of such seasonal industry in an amount equal to the amount specified on the corresponding line of the second column at the end of this subsection, shall be considered as having employment which continues substantially throughout the year and shall not be considered a seasonal worker.

Operating Period of Seasonal Industry	Wages Earned in Seasonal Industry During Nonoperating Period
27-36 Weeks	24 Times Weekly Benefit Amount
6-26 Weeks	30 Times Weekly Benefit Amount

(3) The commission shall prescribe fair and reasonable general rules consistent with this chapter which are applicable to seasonal workers for determining the period or periods during which benefits shall be payable to them. The commission may prescribe fair and reasonable general rules with respect to such other matters relating to benefits for seasonal workers as the commission finds necessary and consistent with the policy and purposes of this chapter.

HISTORY: [Prior § 71-5-509, Codes, 1942, § 7377, Laws, 1940, ch. 295, repealed by implication by Laws, 1948, ch. 412, § 2] Laws, 1983, ch. 369; Laws, 1986, ch. 319, § 2, eff from and after passage (approved March 13, 1986).

Editor's Notes — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

RESEARCH REFERENCES

Am. Jur.
76 Am. Jur. 2d, Unemployment Compensation § 39.

CJS.
81 C.J.S., Social Security and Public Welfare § 510.

§ 71-5-511. Eligibility conditions [Repealed effective July 1, 2023].

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

(a)(i) He has registered for work at and thereafter has continued to report to the department in accordance with such regulations as the department may prescribe; except that the department may, by regulation, waive or alter either or both of the requirements of this subparagraph as to such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of this chapter; and

(ii) He participates in reemployment services, such as job search assistance services, if, in accordance with a profiling system established by the department, it has been determined that he is likely to exhaust regular benefits and needs reemployment services, unless the department determines that:

1. The individual has completed such services; or
2. There is justifiable cause for the claimant's failure to participate in such services.

(b) He has made a claim for benefits in accordance with the provisions of Section 71-5-515 and in accordance with such regulations as the department may prescribe thereunder.

(c) He is able to work, available for work and actively seeking work.

(d) He has been unemployed for a waiting period of one (1) week. No week shall be counted as a week of unemployment for the purposes of this paragraph:

(i) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits;

(ii) If benefits have been paid with respect thereto;

(iii) Unless the individual was eligible for benefits with respect thereto, as provided in Sections 71-5-511 and 71-5-513, except for the requirements of this paragraph.

(e) For weeks beginning on or before July 1, 1982, he has, during his base period, been paid wages for insured work equal to not less than thirty-six (36) times his weekly benefit amount; he has been paid wages for insured work during at least two (2) quarters of his base period; and he has, during that quarter of his base period in which his total wages were highest, been paid wages for insured work equal to not less than sixteen (16) times the minimum weekly benefit amount. For benefit years beginning after July 1, 1982, he has, during his base period, been paid wages for insured work equal to not less than forty (40) times his weekly benefit amount; he has been paid wages for insured work during at least two (2) quarters of his base period, and he has, during that quarter of his base period in which his total wages were highest, been paid wages for insured work equal to not less than twenty-six (26) times the minimum weekly benefit amount. For purposes of this paragraph, wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employing unit by which such wages were paid has satisfied the conditions of Section 71-5-11, subsection H, or Section 71-5-361, subsection (3), with respect to becoming an employer.

(f) No individual may receive benefits in a benefit year unless, subsequent to the beginning of the next preceding benefit year during which he received benefits, he performed service in "employment" as defined in Section 71-5-11, subsection I, and earned remuneration for such service in an amount equal to not less than eight (8) times his weekly benefit amount applicable to his next preceding benefit year.

(g) Benefits based on service in employment defined in Section 71-5-11, subsection I(3) and I(4), and Section 71-5-361, subsection (4) shall be payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that benefits based on service in an instructional, research or principal administrative capacity in an institution of higher learning (as defined in Section 71-5-11, subsection N) with respect to service performed prior to January 1, 1978, shall not be paid to an individual for any week of unemployment which begins during the period between two (2) successive academic years, or during a similar period between two (2) regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher learning for both such academic years or both such terms.

(h) Benefits based on service in employment defined in Section 71-5-11, subsection I(3) and I(4), shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that:

(i) With respect to service performed in an instructional, research or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two (2) successive academic years, or during a similar period between two (2) regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual, if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms, and provided that paragraph (g) of this section shall apply with respect to such services prior to January 1, 1978. In no event shall benefits be paid unless the individual employee was terminated by the employer.

(ii) With respect to services performed in any other capacity for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week which commences during a period between two (2) successive academic years or terms, if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if compensation is denied to any individual under this subparagraph and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this clause. In no event shall benefits be paid unless the individual employee was terminated by the employer.

(iii) With respect to services described in subparagraphs (i) and (ii) of this paragraph (h), benefits shall not be payable on the basis of services in any such capacities to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the first of such academic years or terms, or in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(iv) With respect to any services described in subparagraphs (i) and (ii) of this paragraph (h), benefits shall not be payable on the basis of services in any such capacities as specified in subparagraphs (i), (ii) and (iii) of this paragraph (h) to any individual who performed such services in an educational institution while in the employ of an educational service agency. For purposes of this paragraph, the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(v) With respect to services to which Sections 71-5-357 and 71-5-359 apply, if such services are provided to or on behalf of an educational institution, benefits shall not be payable under the same circumstances and subject to the same terms and conditions as described in subparagraphs (i), (ii), (iii) and (iv) of this paragraph (h).

(i) Subsequent to December 31, 1977, benefits shall not be paid to any individual on the basis of any services substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two (2) successive sports seasons (or similar periods) if such individual performs such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

(j)(i) Subsequent to December 31, 1977, benefits shall not be payable on the basis of services performed by an alien, unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act).

(ii) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(iii) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made, except upon a preponderance of the evidence.

(k) An individual shall be deemed prima facie unavailable for work, and therefore ineligible to receive benefits, during any period which, with respect to his employment status, is found by the department to be a holiday or vacation period.

(*l*) A temporary employee of a temporary help firm is considered to have left the employee's last work voluntarily without good cause connected with the work if the temporary employee does not contact the temporary help firm for reassignment on completion of an assignment. A temporary employee is not considered to have left work voluntarily without good cause connected with the work under this paragraph unless the temporary employee has been advised in writing:

(i) That the temporary employee is obligated to contact the temporary help firm on completion of assignments; and

(ii) That unemployment benefits may be denied if the temporary employee fails to do so.

HISTORY: Codes, 1972, § 7378; Laws, 1940, ch. 295, § 2; Laws, 1948, ch. 412, § 3; Laws, 1954, ch. 353, § 1; Laws, 1958, ch. 533, § 2; Laws, 1968, ch. 561, § 2; Laws, 1971, ch. 519, § 4; Laws, 1977, ch. 497, § 7; Laws, 1978, ch. 339, § 2; Laws, 1981, ch. 466, § 1; Laws, 1982, ch. 480, § 2; Laws, 1983, ch. 358; Laws, 1984, ch. 498, § 2; Laws, 1990, ch. 417, § 1; Laws, 1994, ch. 357, § 1; Laws, 1995, ch. 507, § 7; Laws, 2004, ch. 572, § 38; Laws, 2007, ch. 606, § 13; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 38; reenacted without change, Laws, 2010, ch. 559, § 380; reenacted without change, Laws, 2011, ch. 471, § 39; reenacted without change, Laws, 2012, ch. 515, § 39; Laws, 2013, ch. 309, § 13, eff from and after passage (approved March 6, 2013); reenacted without change, Laws, 2019, ch. 451, § 38, eff from and after April 3, 2019.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in internal statutory references by making the following substitutions: in (d), (d)(iii) and (e), "this paragraph" for "this subsection"; in (h)(i), "paragraph (g)" for "subsection (g)"; in (h)(iii) and (h)(iv), "subparagraphs (i) and (ii) of this paragraph (h)" for "subsection (h)(i) and (ii)" and "this paragraph" for "this subsection"; in (h)(iv), "subparagraphs (i), (ii) and (iii) of this paragraph (h)" for "subsection (h)(i), (ii) and (iii)"; and in (h)(v), "subparagraphs (i), (ii), (iii) and (iv) of this paragraph (h)" for "subsection (h)(i), (ii), (iii) and (iv)." The Joint Committee ratified the correction at its August 20, 2021, meeting.

Editor's Notes — Laws of 1977, ch. 497, § 10, provides:

"SECTION 10. In the event the provisions of P.L. 94-566, the Unemployment Compensation Amendments of 1976, which mandate unemployment insurance coverage for state and local government employees, are declared unconstitutional, the amendments, which mandate unemployment insurance coverage for state and local government employees, adopted to Sections 71-5-11, 71-5-351, 71-5-355, 71-5-357, 71-5-359, 71-5-361, 71-5-511, 71-5-513 and 71-5-541, Mississippi Code of 1972, at the 1977 Regular Session of the Legislature shall stand repealed."

Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in internal statutory references by making the following substitutions: in (d), (d)(iii) and (e), "this paragraph" for "this subsection"; in (h)(i), "paragraph (g)" for "subsection (g)"; in (h)(iii) and (h)(iv), "subparagraphs (i) and (ii) of this paragraph (h)" for "subsection (h)(i) and (ii)" and "this paragraph" for "this subsection"; in (h)(iv), "subparagraphs (i), (ii) and (iii) of this paragraph (h)" for "subsection (h)(i), (ii) and (iii)"; and in (h)(v), "subparagraphs (i), (ii), (iii) and (iv) of this paragraph (h)" for "subsection (h)(i), (ii), (iii) and (iv)." The Joint Committee ratified the correction at its August 20, 2021, meeting.

Cross References — Definition of terms qualifying eligibility, see § 71-5-11.

Eligibility under reciprocal arrangements with other states or the federal government, see § 71-5-13.

Inclusion of wages for previously uncovered services in determining modified rates of employer contributions, see § 71-5-355.

Regulations governing payment of benefits to employees of nonprofit organizations, see § 71-5-357.

The liability of governmental entities to make payments to the unemployment fund with respect to benefits paid to individuals whose base-period wages include wages for previously uncovered services as defined in this section, see § 71-5-359.

Employers subject to payment of benefits, see § 71-5-361.

Payment of benefits, see § 71-5-501.

Exclusion of jury duty pay and "inactive duty training" compensation and "unit training Assembly" compensation payable to member of any reserve component from computation of weekly unemployment benefits, see § 71-5-505.

Disqualification for benefits, see § 71-5-513.

Effect of jury duty or medical emergency on determination of able and available requirements, see § 71-5-541.

Federal Aspects— The Immigration and Nationality Act appears as 8 USCS §§ 1101 et seq.

The Federal Unemployment Tax Act appears as 26 USCS §§ 3301 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. "Available for work."
3. Religious beliefs.
4. Misconduct.
5. Holiday and vacation periods.
6. Medical leave.
7. "Termination."

1. In general.

Employee admitted she voluntarily left her job in Mississippi to pursue educational opportunities. Thus, pursuant to Miss. Code Ann. § 71-5-513 A(1)(a) she was not entitled to unemployment benefits, and under Miss. Code Ann. § 71-5-19(4), she was obligated to repay the benefits to which she was not entitled. Westbrook v. Miss. Empl. Sec. Comm'n, 910 So. 2d 1135, 2005 Miss. App. LEXIS 203 (Miss. Ct. App. 2005).

The purpose of this statute is not to protect persons self-employed, and only wage earners can become eligible for unemployment compensation benefits. Mississippi Employment Sec. Com. v. Medlin, 252 Miss. 146, 171 So. 2d 496, 1965 Miss. LEXIS 1085 (Miss. 1965).

The unemployment compensation law makes no distinction between union and nonunion members. Mills v. Mississippi Employment Sec. Com., 228 Miss. 789, 89 So. 2d 727, 1956 Miss. LEXIS 566 (Miss. 1956).

Compliance with the statute or rules requiring an unemployment claimant to register for work and file a claim for benefits at the public unemployment office, and to continue to report at stated intervals during the waiting period, could not be waived by a mere receptionist in the waiting room of the employment office, and the claimant did not bring himself within either the terms of the statute or the rules and regulations prescribed thereunder, so as to be entitled to the compensation allowed, by showing that he presented his social security card to one of the ladies in the front office of the local unemployment compensation commission and that she informed him that he would have to get his compensation benefits from the State of Tennessee, his employer being a Tennessee corporation and his employment being in that state. Unemployment Compensation Com. v. Barlow, 191 Miss. 156, 1 So. 2d 241, 2 So. 2d 544, 1941 Miss. LEXIS 111 (Miss. 1941).

2. "Available for work."

Claimant who limited his availability for employment to work for a specific wage that was excessive for an entry-level type sedentary or clerical position in the state and solely based on his particular needs and circumstances was not entitled to unemployment insurance benefits because he was not unequivocally exposed to the labor market. Wren v. Miss. Empl. Sec. Comm'n, 821 So. 2d 919, 2002 Miss. App. LEXIS 394 (Miss. Ct. App. 2002).

A claimant is not required to produce medical documentation that she has been unconditionally released to return to work after an injury; the only requirement is that she show that she is able and available to work. Mickle v. Mississippi Empl. Sec. Comm'n, 765 So. 2d 1259, 2000 Miss. LEXIS 195 (Miss. 2000).

A conclusion that a claimant was unable and unavailable for work was not supported by the evidence where (1) the appeals referee did not find that the claimant's injury actually prevented her from working, but denied her claim because she had "failed to submit medical documentation to show that she has been released for full time work," (2) the only testimony at the hearing was by the claimant, and (3) the only evidence contrary to her positive assertions that she was able and available to work was her physician' release which placed certain restrictions on her return to work and her failure to produce a complete release. Mickle v. Mississippi Empl. Sec. Comm'n, 765 So. 2d 1259, 2000 Miss. LEXIS 195 (Miss. 2000).

Substantial evidence supported the conclusion that the claimant failed to prove that she was able to accept suitable work pursuant to subsection (c) of this section where her most recent release from her physician placed restrictions on her ability to secure employment. Mickle v. Mississippi Empl. Sec. Comm'n, 1999 Miss. App. LEXIS 584 (Miss. Ct. App. Sept. 28, 1999).

A diesel machinist was available to, and for, work within the meaning of § 71-5-511(c) and thus would be entitled to unemployment benefits, where the machinist had worked for an employer for six years, he had been working a second shift full-time and attending diesel mechanical school full-time when he was laid off, where he attended diesel mechanical school in order to improve his skill and which would be beneficial to his employer once he resumed work, and where he would terminate his schooling and work on whatever shift the employer required without limitation or restriction. Mississippi Employment Sec. Com. v. McLeod, 419 So. 2d 207, 1982 Miss. LEXIS 2138 (Miss. 1982).

A claimant was not available for work and was therefore not entitled to unemployment insurance benefits where he had refused to return to work at his former employer's for a lower salary, or to accept work anywhere else for less than $10 per hour. Mississippi Employment Sec. Com. v. Swilley, 408 So. 2d 61, 1981 Miss. LEXIS 2299 (Miss. 1981).

Long-distance telephone operators who declined offers to transfer to neighboring towns when their office was closed were improperly granted unemployment insurance where the distance to be traveled did not render the available work unsuitable and where few such jobs were available in the city in which they had been working; thus, the operators had unreasonably restricted the terms and conditions under which they would accept employment and were not "available for work." South Cent. Bell Tel. Co. v. Mississippi Employment Sec. Com., 357 So. 2d 312, 1978 Miss. LEXIS 2503 (Miss. 1978).

An unemployed individual is not "available for work" as required by this section [Code 1942, § 7378], and is ineligible for benefits where he refuses nonunion employment by stating that he would not work for less than the union scale fixed by contract duly negotiated through collective bargaining. Mills v. Mississippi Employment Sec. Com., 228 Miss. 789, 89 So. 2d 727, 1956 Miss. LEXIS 566 (Miss. 1956).

3. Religious beliefs.

A public school teacher's wearing of a head-wrap as an expression of her religious and cultural heritage as a member of the African Hebrew Israelites in violation of the school's dress code was constitutionally protected religious and cultural expression, such that the Mississippi Employment Security Commission had no authority to deny her claim for unemployment compensation benefits after she was discharged for insubordination when she refused to discontinue wearing the headwrap, even though there is no specific tenant of the African Hebrew Israelites mandating that women wear headdress, the teacher was not a regular participant in the organized activities of a particular church, synagogue or other religious body, she might have been "selective in wearing the traditional head-wrap" in that at times she did not wear it, and even though her conduct may have been misconduct had it not been constitutionally protected expression. Mississippi Employment Sec. Com. v. McGlothin, 556 So. 2d 324, 1990 Miss. LEXIS 5 (Miss.), cert. denied, 498 U.S. 879, 111 S. Ct. 211, 112 L. Ed. 2d 171, 1990 U.S. LEXIS 4937 (U.S. 1990).

A state may not deny unemployment benefits on the ground that the individual has refused to abandon sincerely held religious beliefs. Mississippi Employment Sec. Com. v. McGlothin, 556 So. 2d 324, 1990 Miss. LEXIS 5 (Miss.), cert. denied, 498 U.S. 879, 111 S. Ct. 211, 112 L. Ed. 2d 171, 1990 U.S. LEXIS 4937 (U.S. 1990).

State's denial of unemployment compensation benefits to individual who refused a temporary position requiring work on Sunday due to his religious belief that Sunday was "the Lord's Day" violates free exercise clause of Federal Constitution's First Amendment, even though individual belongs to no established religious sect or church. Frazee v. Illinois Dep't of Employment Sec., 489 U.S. 829, 109 S. Ct. 1514, 103 L. Ed. 2d 914, 1989 U.S. LEXIS 1671 (U.S. 1989).

4. Misconduct.

A claimant was properly terminated for misconduct and, therefore, was not entitled to benefits where there was testimony by a representative of the employer that the claimant's work in three different positions was so slow and nonproductive that it appeared that he was acting purposely or against the best interest of the employer. Mississippi Employment Sec. Comm'n v. Universal Wearparts, Inc., 766 So. 2d 104, 2000 Miss. App. LEXIS 396 (Miss. Ct. App. 2000).

5. Holiday and vacation periods.

Denial of unemployment benefits to the employees was appropriate because they agreed to the shutdown and were paid for the company holidays as specified, but were on unpaid vacation, pursuant to Miss. Code Ann. § 71-5-511(k), for the remaining days of the shutdown, which was not a lack-of-work shutdown. Alexander v. Miss. Dep't of Empl. Sec., 998 So. 2d 419, 2008 Miss. LEXIS 577 (Miss. 2008).

Where the claimant, who was a part-time non-seniority employee, was laid off prior to a vacation shutdown period pursuant to a collective bargaining agreement provision which stated that any active employee without seniority would be considered on layoff during a shutdown, he was entitled to benefits as he was not "on vacation" within the meaning of subsection (k). Mississippi Empl. Sec. Comm'n v. Funches, 782 So. 2d 760, 2001 Miss. App. LEXIS 98 (Miss. Ct. App. 2001).

A part-time employee with no seniority was not entitled to unemployment compensation benefits for a two week period when the employer's plant was shut down for a union negotiated vacation/holiday period. Mississippi Empl. Sec. Comm'n v. Funches, 2000 Miss. App. LEXIS 264 (Miss. Ct. App. June 6, 2000).

6. Medical leave.

Employee on medical leave from his employment due to a job-related knee injury was not entitled to unemployment benefits. His job was waiting for him and he only needed to present medical certification to return to work. Henry v. Miss. Empl. Sec. Comm'n, 905 So. 2d 738, 2004 Miss. App. LEXIS 1086 (Miss. Ct. App. 2004).

7. "Termination."

Miss. Code Ann. § 71-5-511(h)(i) (2000) demonstrated that a substitute teacher was not entitled to receive any unemployment benefits because, inter alia, he remained on the substitute teacher list for the school and therefore had a "reasonable assurance" that he would be called on again to perform work as a substitute teacher and he had not been "terminated" as a substitute teacher and, therefore, could have been given the opportunity to work in different positions at the school, as needed. Thomas v. Miss. Empl. Sec.

Comm'n, 910 So. 2d 1220, 2005 Miss. App. LEXIS 619 (Miss. Ct. App. 2005).

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Discharge for absenteeism or tardiness as affecting right to unemployment compensation. 58 A.L.R.3d 674.

Construction of phrase "stoppage of work" in statutory provision denying unemployment compensation benefits during stoppage resulting from labor dispute. 61 A.L.R.3d 693.

Unemployment compensation: eligibility of participants in sympathy strike or slowdown. 61 A.L.R.3d 746.

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Unemployment compensation: harassment or other mistreatment by employer or supervisor as "good cause" justifying abandonment of employment. 76 A.L.R.3d 1089.

Criminal liability for wrongfully obtaining unemployment benefits. 80 A.L.R.3d 1280.

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Use of vulgar or profane language as bar to claim for unemployment compensation. 92 A.L.R.3d 106.

Unemployment compensation: eligibility as affected by mental, nervous, or psychological disorder. 1 A.L.R.4th 802.

Right to unemployment compensation as affected by claimant's receipt of holiday pay. 3 A.L.R.4th 557.

Leaving or refusing employment for religious reasons as barring unemployment compensation. 12 A.L.R.4th 611.

Unemployment compensation as affected by vacation or payment in lieu thereof. 14 A.L.R.4th 1175.

Unemployment compensation: burden of proof as to voluntariness of separation. 73 A.L.R.4th 1093.

Employee's use of drugs or narcotics, or related problems, as affecting eligibility for unemployment compensation. 78 A.L.R.4th 180.

Eligibility for unemployment compensation of employee who left employment based on belief that involuntary discharge was imminent. 79 A.L.R.4th 528.

Unemployment compensation: eligibility where claimant leaves employment under circumstances interpreted as a firing by the claimant but as a voluntary quit by the employer. 80 A.L.R.4th 7.

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Unemployment compensation: Leaving employment in pursuit of education or to attend training as affecting right to unemployment compensation. 47 A.L.R.5th 775.

Leaving employment or unavailability for particular job or duties because of sickness or disability, as affecting right to unemployment compensation. 68 A.L.R.5th 13.

Eligibility for unemployment compensation of employee who retires voluntarily. 75 A.L.R.5th 339.

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76 Am. Jur. 2d, Unemployment Compensation §§ 29 et seq., 59 et seq.

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§ 71-5-513. Disqualifications [Repealed effective July 1, 2023].

A. An individual shall be disqualified for benefits:

(1)(a) For the week, or fraction thereof, which immediately follows the day on which he left work voluntarily without good cause, if so found by the department, and for each week thereafter until he has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly benefit amount, as determined in each case; however, marital, filial and domestic circumstances and obligations shall not be deemed good cause within the meaning of this subsection. Pregnancy shall not be deemed to be a marital, filial or domestic circumstance for the purpose of this subsection.

(b) For the week, or fraction thereof, which immediately follows the day on which he was discharged for misconduct connected with his work, if so found by the department, and for each week thereafter until he has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly benefit amount, as determined in each case.

(c) The burden of proof of good cause for leaving work shall be on the claimant, and the burden of proof of misconduct shall be on the employer.

(2) For the week, or fraction thereof, with respect to which he willfully makes a false statement, a false representation of fact, or willfully fails to disclose a material fact for the purpose of obtaining or increasing benefits under the provisions of this law, if so found by the department, and such individual's maximum benefit allowance shall be reduced by the amount of benefits so paid to him during any such week of disqualification; and

additional disqualification shall be imposed for a period not exceeding fifty-two (52) weeks, the length of such period of disqualification and the time when such period begins to be determined by the department, in its discretion, according to the circumstances in each case.

(3) If the department finds that he has failed, without good cause, either to apply for available suitable work when so directed by the employment office or the department, to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the department, such disqualification shall continue for the week in which such failure occurred and for not more than the twelve (12) weeks which immediately follow such week, as determined by the department according to the circumstances in each case.

(a) In determining whether or not any work is suitable for an individual, the department shall consider among other factors the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence; however, offered employment paying the minimum wage or higher, if such minimum or higher wage is that prevailing for his customary occupation or similar work in the locality, shall be deemed to be suitable employment after benefits have been paid to the individual for a period of eight (8) weeks.

(b) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(i) If the position offered is vacant due directly to a strike, lockout or other labor dispute;

(ii) If the wages, hours or other conditions of the work offered are substantially unfavorable or unreasonable to the individual's work. The department shall have the sole discretion to determine whether or not there has been an unfavorable or unreasonable condition placed on the individual's work. Moreover, the department may consider, but shall not be limited to a consideration of, whether or not the unfavorable condition was applied by the employer to all workers in the same or similar class or merely to this individual;

(iii) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(iv) If unsatisfactory or hazardous working conditions exist that could result in a danger to the physical or mental well-being of the worker. In any such determination the department shall consider, but shall not be limited to a consideration of, the following: the safety measures used or the lack thereof and the condition of equipment or lack of proper equipment. No work shall be considered hazardous if the working conditions surrounding a worker's employment are the same or substantially the same as the working conditions generally prevailing among workers performing the same or similar work for other employers engaged in the same or similar type of activity.

(c) Pursuant to Section 303(1) of the Social Security Act (42 USCS 503), the department may conduct drug tests of applicants for unemployment compensation for the unlawful use of controlled substances as a condition for receiving such compensation, if such applicant:

(i) Was terminated from employment with the claimant's most recent employer, as defined by Mississippi law, because of the unlawful use of controlled substances; or

(ii) Is an individual for whom suitable work, as defined by Mississippi law, is only available in an occupation (as determined under regulations issued by the U.S. Secretary of Labor) that requires drug testing.

The department may deny unemployment compensation to any applicant based on the result of a drug test conducted by the department in accordance with this subsection. A positive drug test result shall be deemed by the department to be a failure to accept suitable work, and shall subject the applicant to the disqualification provisions set forth in this subsection A(3). During the disqualification period imposed by the department under this subsection, the individual may provide information to end the disqualification period early by submitting acceptable proof to the department of a negative test result from a testing facility approved by the department.

(iii) Pursuant to the provisions set forth in this subsection A(3)(c), the department shall have the authority to institute a random drug testing program for all individuals who meet the requirements set forth in this section. Moreover, the department shall have the authority to create the necessary regulations, policies rules, guidelines and procedures to implement such a program.

Any term or provision set forth in this subsection A(3)(c) that otherwise conflicts with federal or state law shall be disregarded but shall not, in any way, affect the remaining provisions.

(4) For any week with respect to which the department finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at a factory, establishment or other premises at which he is or was last employed; however, this subsection shall not apply if it is shown to the satisfaction of the department:

(a) He is unemployed due to a stoppage of work occasioned by an unjustified lockout, if such lockout was not occasioned or brought about by such individual acting alone or with other workers in concert; or

(b) He is not participating in or directly interested in the labor dispute which caused the stoppage of work; and

(c) He does not belong to a grade or class of workers of which, immediately before the commencement of stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or directly interested in the dispute.

If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment or other premises.

(5) For any week with respect to which he has received or is seeking unemployment compensation under an unemployment compensation law of another state or of the United States. However, if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment compensation benefits, this disqualification shall not apply. Nothing in this subsection contained shall be construed to include within its terms any law of the United States providing unemployment compensation or allowances for honorably discharged members of the Armed Forces.

(6) For any week with respect to which he is receiving or has received remuneration in the form of payments under any governmental or private retirement or pension plan, system or policy which a base-period employer is maintaining or contributing to or has maintained or contributed to on behalf of the individual; however, if the amount payable with respect to any week is less than the benefits which would otherwise be due under Section 71-5-501, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration. However, on or after the first Sunday immediately following July 1, 2001, no social security payments, to which the employee has made contributions, shall be deducted from unemployment benefits paid for any period of unemployment beginning on or after the first Sunday following July 1, 2001. This one hundred percent (100%) exclusion shall not apply to any other governmental or private retirement or pension plan, system or policy. If benefits payable under this section, after being reduced by the amount of such remuneration, are not a multiple of One Dollar ($1.00), they shall be adjusted to the next lower multiple of One Dollar ($1.00).

(7) For any week with respect to which he is receiving or has received remuneration in the form of a back pay award, or other compensation allocable to any week, whether by settlement or otherwise. Any benefits previously paid for weeks of unemployment with respect to which back pay awards, or other such compensation, are made shall constitute an overpayment and such amounts shall be deducted from the award by the employer prior to payment to the employee, and shall be transmitted promptly to the department by the employer for application against the overpayment and credit to the claimant's maximum benefit amount and prompt deposit into the fund; however, the removal of any charges made against the employer as a result of such previously paid benefits shall be applied to the calendar year and the calendar quarter in which the overpayment is transmitted to the department, and no attempt shall be made to relate such a credit to the period to which the award applies. Any amount of overpayment so deducted by the employer and not transmitted to the department shall be subject to

the same procedures for collection as is provided for contributions by Sections 71-5-363 through 71-5-381. Any amount of overpayment not deducted by the employer shall be established as an overpayment against the claimant and collected as provided above. It is the purpose of this paragraph to assure equity in the situations to which it applies, and it shall be construed accordingly.

B. Notwithstanding any other provision in this chapter, no otherwise eligible individual shall be denied benefits for any week because he is in training with the approval of the department; nor shall such individual be denied benefits with respect to any week in which he is in training with the approval of the department by reason of the application of provisions in Section 71-5-511, subsection (c), relating to availability for work, or the provisions of subsection A(3) of this section, relating to failure to apply for, or a refusal to accept, suitable work.

C. Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits for any week because he or she is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall such individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any such week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work or refusal to accept work.

For purposes of this section, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

D. Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits for any week in which they are engaged in the Self-Employment Assistance Program established in Section 71-5-545 by reason of the application of Section 71-5-511(c), relating to availability for work, or the provisions of subsection A(3) of this section, relating to failure to apply for, or a refusal to accept, suitable work.

E. Any individual who is receiving benefits may participate in an approved training program under the Mississippi Employment Security Law to gain skills that may lead to employment while continuing to receive benefits. Authorization for participation of a recipient of unemployment benefits in such a program must be granted by the department and continuation of participation must be certified weekly by the participant recipient. While participating in such program approved by the department, availability and work search requirements will be waived. No individual will be allowed to participate in this program for more than twelve (12) weeks in any benefit year. Such participation shall not be considered employment for any purposes and shall not accrue benefits or wage credits. Participation in this training program shall meet the definition set forth in the U.S. Fair Labor Standards Act.

HISTORY: Codes, 1942, § 7379; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 1; Laws, 1954, ch. 353, § 2; Laws, 1958, ch. 533, § 3; Laws, 1962, ch. 564, § 1; Laws, 1971, ch. 519, § 5; Laws, 1977, ch. 497, § 8; Laws, 1982, ch. 480, § 3; Laws, 1983, ch. 364, § 4; Laws, 1984, ch. 498, § 3; Laws, 1986, ch. 316, § 2; Laws, 1988, ch. 365; Laws, 1994, ch. 303, § 4; Laws, 1996, ch. 464, § 3; Laws, 2001, ch. 405, § 1; Laws, 2004, ch. 572, § 39; Laws, 2007, ch. 606, § 14; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 39; reenacted without change, Laws, 2010, ch. 559, § 39; reenacted without change, Laws, 2011, ch. 471, § 40; reenacted and amended, Laws, 2012, ch. 515, § 40, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 39, eff from and after April 3, 2019.

Editor's Notes — Laws of 1977, ch. 497, § 10, provides:

"SECTION 10. In the event the provisions of P.L. 94-566, the Unemployment Compensation Amendments of 1976, which mandate unemployment insurance coverage for state and local government employees, are declared unconstitutional, the amendments, which mandate unemployment insurance coverage for state and local government employees, adopted to Sections 71-5-11, 71-5-351, 71-5-355, 71-5-357, 71-5-359, 71-5-361, 71-5-511, 71-5-513 and 71-5-541, Mississippi Code of 1972, at the 1977 Regular Session of the Legislature shall stand repealed."

Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Benefits paid during any week individual is in training under provisions of this section not to be charged to employer's experience-rating record, see § 71-5-355.

Exclusion of jury duty pay and "inactive duty training" compensation and "unit training Assembly" compensation payable to member of any reserve component from computation of weekly unemployment benefits, see § 71-5-505.

Conditions of eligibility for benefits, see § 71-5-511.

Procedures relative to initial determinations made on the basis of subsection A(4) of this section, see § 71-5-517.

Application of subsections A(1) and A(4) of this section to the disqualification of an individual to receive extended benefits, see § 71-5-541.

Federal Aspects— Trade Act of 1974, see 19 USCS §§ 2101 et seq.

Section 236(a)(1) of the Trade Act of 1974 is classified at 19 USCS § 2296(a)(1).

Fair Labor Standards Act generally, see 29 USCS §§ 201 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Burden of proof.
3. Religion.
4. Labor disputes, lock-outs, etc.
5. Leaving employment without good cause.
6. Leaving employment with good cause.
7. Availability for work.
8. Misconduct discharge, generally.
8. —Held disqualification.
10. —Held not disqualification.
11. Late notice of appeal.

1. In general.

Employee himself corroborated a manager's statement that the employee had connected a personal "Zip drive" to the company's computer system in violation of the employer's policy. Thus, the manager corroborated not only the existence of the policy prohibiting such conduct but also the employee's knowledge thereof; the employee's argument that uncorroborated hearsay was admitted in the form of a memorandum on the latter issue was rejected. Howell v. Miss. Empl. Sec. Comm'n, 906 So. 2d 766, 2004 Miss. App. LEXIS 1145 (Miss. Ct. App. 2004).

Decision of the Appeals Referee was appropriate under the facts and circumstances before him at the time of the hearing; the appropriate time to address the issue of notice of the telephone hearing was in a timely appeal of the referee's decision. Miss. Empl. Sec. Comm'n v. Marion County Sheriff's Dep't, 865 So. 2d 1153, 2004 Miss. LEXIS 183 (Miss. 2004).

Alleged sexual harassment of claimant in workplace provided her with good cause for voluntarily leaving her employment, and therefore claimant was eligible to receive unemployment compensation benefits, though employer contended that claimant had created and participated in the harassment, and claimant had not reported harassment to any management higher than her immediate supervisor. Hoerner Boxes v. Mississippi Empl. Sec. Comm'n, 693 So. 2d 1343, 1997 Miss. LEXIS 231 (Miss. 1997).

If employee is sexually harassed to such degree that ordinary prudent employee would leave ranks of employed for unemployed, then employee should not be denied unemployment compensation benefits. Hoerner Boxes v. Mississippi Empl. Sec. Comm'n, 693 So. 2d 1343, 1997 Miss. LEXIS 231 (Miss. 1997).

Sexual harassment in workplace constitutes good cause for voluntarily leaving employment in context of unemployment compensation benefit claims. Hoerner Boxes v. Mississippi Empl. Sec. Comm'n, 693 So. 2d 1343, 1997 Miss. LEXIS 231 (Miss. 1997).

Unemployment compensation benefits should be offset by the amount of Social Security benefits received when the base-period employer has contributed to the system; thus, an employee's receipt of Social Security benefits in excess of unemployment benefits for which he would otherwise have been eligible disqualified him from receiving those unemployment benefits. Sanders v. Mississippi Employment Sec. Comm'n, 662 So. 2d 635, 1995 Miss. LEXIS 507 (Miss. 1995).

Employees whose jobs were eliminated by technological advances, and who were given the options of terminating employment with a lump sum payment of money, transferring to another job with the same employer in an office either 218 miles, 90 miles, or 81 miles, from the employees' homes, or taking a technological leave of absence, were "unemployed" within the plain meaning of §§ 71-5-11(O) and 71-5-513. Curtis v. Mississippi Employment Sec. Com., 451 So. 2d 736, 1984 Miss. LEXIS 1756 (Miss. 1984).

The trial court erred in reversing the decision of the Mississippi Employment Security Commission which allowed unemployment insurance benefits to an employee discharged from her position where the cause of her discharge had been her employer's dissatisfaction with her work performance and some errors she had made in bookkeeping procedure but where there was no evidence to show that the employee had failed to perform the work to the best of her ability or had wilfully failed to follow any instructions given by her employer or that she had been guilty of any wilful or intentional neglect or any misappropriation of funds. Wheeler v. Arriola, 408 So. 2d 1381, 1982 Miss. LEXIS 1858 (Miss. 1982).

A claimant who voluntarily left her employment as a cook in a restaurant was entitled to benefits where her work hours had been reduced by her employer approximately 50 percent, below the cost of hiring an individual to care for her children while she worked. Tate v. Mississippi Employment Sec. Com., 407 So. 2d 109, 1981 Miss. LEXIS 2465 (Miss. 1981).

An order of the board of review of the employment security commission as to facts, if supported by evidence and in the absence of fraud, is conclusive upon the trial court on review. Mississippi Employment Sec. Com. v. Fortenberry, 193 So. 2d 142, 1966 Miss. LEXIS 1282 (Miss. 1966).

Remuneration "for personal services" referred to in this section [Code 1942, § 7379] is meant to be the equivalent of "wages." Mississippi Employment Sec. Com. v. Medlin, 252 Miss. 146, 171 So. 2d 496, 1965 Miss. LEXIS 1085 (Miss. 1965).

2. Burden of proof.

Because a motel clerk met the burden of proof of good cause for leaving work, pursuant to Miss. Code Ann. § 71-5-513(A)(1)(c), based on her refusal to engage in conduct that was illegal as a matter of law, i.e., engage in price-gouging by charging "rack rates" for motel rooms following Hurricane Katrina, the clerk was entitled to unemployment benefits. Sherman v. Miss. Empl. Sec. Comm'n, 989 So. 2d 398, 2008 Miss. LEXIS 418 (Miss. 2008).

The requirement by the referee that employee offer rebuttal evidence to rebut employer's allegation of misconduct, when no evidence of misconduct had been offered, was an improper shifting of the burden of proof. Little v. Mississippi Empl. Sec. Comm'n, 754 So. 2d 1258, 1999 Miss. App. LEXIS 715 (Miss. Ct. App. 1999).

The referee did not inappropriately shift the burden of proof when he stated that the employer/city would be responsible for establishing that the claimant voluntarily left his employment without good cause, where the examiner's file, which established that the claimant was entitled to benefits, was made part of the record on appeal to the referee; the claimant was in the place of a defendant having already established that he was entitled to the unemployment benefits as the examiner determined and, because the city raised the issue that the examiner's decision was wrong, the burden shifted to the city to come forward with evidence to rebut that evidence previously given to the claims examiner and made a part of the record before the appeals referee. City of Clarksdale v. Smith, 739 So. 2d 482, 1999 Miss. App. LEXIS 230 (Miss. Ct. App. 1999).

An appeals referee erred in ruling that an employee was disqualified from receiving unemployment benefits for voluntarily leaving his job without good cause where the employee's reason for leaving was in dispute, and the ruling was based solely on the employee's failure to prove "good cause," since the burden of proof should have been placed on the employer to show by substantial, clear and convincing evidence that the employee left his job "voluntarily without good cause." Ferrill v. Mississippi Employment Sec. Comm'n, 642 So. 2d 933, 1994 Miss. LEXIS 445 (Miss. 1994).

In unemployment compensation cases, the employer bears the burden of proving by substantial, clear, and convincing evidence that a former employee's conduct warrants disqualification of benefits. Shannon Engineering & Constr., Inc. v. Mississippi Employment Sec. Com., 549 So. 2d 446, 1989 Miss. LEXIS 426 (Miss. 1989).

The unemployed individual has the burden of showing that conditions of benefits have been met. Mississippi Employment Sec. Com. v. Blasingame, 237 Miss. 744, 116 So. 2d 213, 1959 Miss. LEXIS 527 (Miss. 1959).

3. Religion.

A public school teacher's wearing of a head-wrap as an expression of her religious and cultural heritage as a member of the African Hebrew Israelites in violation of the school's dress code was constitutionally protected religious and cultural expression, such that the Mississippi Employment Security Commission had no authority to deny her claim for unemployment compensation benefits after she was discharged for insubordination when she refused to discontinue wearing the head-wrap, even though there is no specific tenant of the African Hebrew Israelites mandating that women wear headdress, the teacher was not a regular participant in the organized activities of a particular church, synagogue or other religious body, she might have been "selective in wearing the traditional head-wrap" in that at times she did not wear it, and even though her conduct may have been misconduct had it not been constitutionally protected expression. Mississippi Employment Sec. Com. v. McGlothin, 556 So. 2d 324, 1990 Miss. LEXIS 5 (Miss.), cert. denied, 498 U.S. 879, 111 S. Ct. 211, 112 L. Ed. 2d 171, 1990 U.S. LEXIS 4937 (U.S. 1990).

A state may not deny unemployment benefits on the ground that the individual has refused to abandon sincerely held religious beliefs. Mississippi Employment Sec. Com. v. McGlothin, 556 So. 2d 324, 1990 Miss. LEXIS 5 (Miss.), cert. denied, 498 U.S. 879, 111 S. Ct. 211, 112 L. Ed. 2d 171, 1990 U.S. LEXIS 4937 (U.S. 1990).

4. Labor disputes, lock-outs, etc.

Section 71-5-513(A)(4), which disqualifies an unemployed worker from receiving unemployment compensation benefits when the unemployment is "due to a stoppage of work which exists because of a labor dispute," only applies to the period that the employee is out because of a stoppage of work due to a labor dispute in which the employee chose to leave the job; it has no application to the period beginning when the employee returns to work in good faith only to find that the employer has replaced him or her solely because of the labor dispute, since the employee is then out of work because of something over which he or she has no control. Mississippi Employment Sec. Com. v. Sanderson Plumbing Products, Inc., 604 So. 2d 215, 1992 Miss. LEXIS 5 (Miss. 1992).

In an action by an employer against the Mississippi Employment Security Commission challenging a ruling that employees were entitled to unemployment benefits as the result of an unjustified lockout by the employer, the circuit court erred in reversing the decision of the Commission where there was substantial evidence to support the finding that the lockout was occasioned solely by the employer and was without justification and that the employees were ready and willing to continue working. Mississippi Employment Sec. Com. v. Georgia-Pacific Corp., 394 So. 2d 299, 1981 Miss. LEXIS 1897 (Miss. 1981).

Closing of a plant in consequence of absence of employees entitled by union contract to a vacation at that time, does not entitle other employees to unemployment compensation. 237 Miss. 897, 116 So. 2d 830.

5. Leaving employment without good cause.

Circuit court properly affirmed a decision by the Mississippi Department of Employment Security denying unemployment benefits to an employee because she voluntarily quit her job after five days without good cause—she did not agree with the employer's offer letter—no evidence was provided regarding how the employee's living expenses were impacted by her alleged salary reduction, and, while possibly inappropriate, the employer's comments about the employee's past domestic violence incident did not constitute good cause to leave her employment since the incident was a matter of public record. Patterson v. Miss. Dep't of Empl. Sec., 316 So. 3d 203, 2021 Miss. App. LEXIS 8 (Miss. Ct. App. 2021).

Substantial evidence existed supported the determination that a former employee failed to demonstrate good cause for leaving his job because he could not show that an "ordinary, prudent" person in his predicament would have felt compelled to quit before finding out whether his employer would accommodate his need for a wheelchair; even if an "ordinary, prudent person" felt compelled to quit, the employee failed to explore reasonable avenues to remain employed before leaving his job. Hereford v. Miss. Dep't of Empl. Sec., 306 So. 3d 863, 2020 Miss. App. LEXIS 629 (Miss. Ct. App. 2020).

Denial of unemployment benefits to a claimant was appropriate because substantial evidence supported the decision as there was testimony that the claimant offered to resign the claimant's employment without good cause and that the employer's board accepted the claimant's resignation. Furthermore, the claimant did not overcome the rebuttable presumption in favor of the decision. Dailey v. Miss. Dep't of Empl. Sec., 271 So. 3d 715, 2018 Miss. App. LEXIS 617 (Miss. Ct. App. 2018).

There was substantial evidence to support the findings that the employee voluntarily left his employment for another job without good cause; his coworker's harassing incidents, while inappropriate, were all dealt with by supervisors to the employee's satisfaction, he was told by mental-health professionals to return to work and face his problems, and the review board could well have determined that the employer was aware of the harassing incidents and addressed them. Alston v. Miss. Dep't of Empl. Sec., 247 So. 3d 303, 2017 Miss. App. LEXIS 653 (Miss. Ct. App. 2017), cert. denied, 246 So. 3d 884, 2018 Miss. LEXIS 261 (Miss. 2018), cert. denied, — U.S. —, 139 S. Ct. 1176, 203 L. Ed. 2d 215, 2019 U.S. LEXIS 1245 (U.S. 2019).

Claimant was disqualified from receiving unemployment benefits because the claimant left work voluntarily without good cause in that the claimant violated the employer's attendance policy, when the claimant failed to show up for work without notification for three consecutive days because the claimant was incarcerated. Moreover, the claimant failed to take steps to protect the claimant's job as the claimant, upon release, did not go to the employer or ask family members to relay the claimant's incarceration to the employer. Robinson v. Miss. Dep't of Empl. Sec., 200 So. 3d 482, 2016 Miss. App. LEXIS 304 (Miss. Ct. App. 2016), cert. denied, 207 So. 3d 1239, 2017 Miss. LEXIS 4 (Miss. 2017).

In denying unemployment benefits under Miss. Code Ann. § 71-5-513(A)(1)(a), the administrative law judge relied solely on an inapplicable employee handbook provision in concluding that the claimant voluntarily had quit. The claimant was not tardy, nor was he absent, and so the policy requiring the claimant to notify the employer within eight hours or be deemed to have quit voluntarily, did not apply. Jones v. Miss. Empl. Sec. Comm'n, 181 So. 3d 1001, 2016 Miss. LEXIS 1 (Miss. 2016).

Claimant was properly denied unemployment compensation benefits because the record showed the claimant had a reasonable assurance of returning to work for a school system in the next academic year but chose to leave the employment to relocate to another state for financial reasons. Thompson v. Armstrong Cork Co., 230 Miss. 730, 93 So. 2d 831, 1957 Miss. LEXIS 415 (Miss. 1957).

Substantial evidence supported the Mississippi Department of Employment Security Board of Review's denial of unemployment benefits to a staffing company's employee because the employee left an assignment to pursue another job opportunity that would allow him a better chance at permanent, full-time employment, he offered no argument of good cause on appeal, and no evidence of good cause appeared in the record. Thompson v. Miss. Dep't of Empl. Sec., 130 So. 3d 174, 2014 Miss. App. LEXIS 18 (Miss. Ct. App. 2014).

6. Leaving employment with good cause.

Circuit court erred in affirming the decision of the Mississippi Department of Employment Security, which denied an employee unemployment benefits, because substantial evidence showed the she did not voluntarily quit but was part of a reduction in force (RIF); the employee was led to believe she was part of the RIF once she turned in a letter and remained under that impression, which was confirmed by the school's payroll clerk after she filed for unemployment benefits. Gladney v. Miss. Dep't of Empl. Sec., 146 So. 3d 1036, 2014 Miss. App. LEXIS 488 (Miss. Ct. App. 2014).

Finding that the employee had voluntarily quit her job for good cause and was entitled to unemployment benefits was appropriate because she proved by substantial evidence that she had good cause to leave her employment with the firm, due to harassment, under Miss. Code Ann. § 71-5-513(A)(1)(c). Miss. Dep't of Empl. Sec. v. Trent L. Howell, PLLC, 46 So. 3d 827, 2010 Miss. App. LEXIS 567 (Miss. Ct. App. 2010).

Benefits claimant was properly denied unemployment compensation because substantial evidence showed that he voluntarily left his job under Miss. Code Ann. § 71-5-513(A)(1)(a) when he turned in his keys following a dispute over pay and a request for time off; moreover, he failed to show good cause for leaving due to this dispute because the job was not detrimental to his health, safety, morals, or physical fitness. Waldrup v. Miss. Empl. Sec. Comm'n, 951 So. 2d 597, 2007 Miss. App. LEXIS 140 (Miss. Ct. App. 2007).

Although the employee claimed that she was unable to cover the assignment due to her current workload as well as family obligations, quitting work due to marital, filial, and domestic circumstances and obligations were not good cause. LaFoe v. Miss. Empl. Sec. Comm'n, 909 So. 2d 115, 2005 Miss. App. LEXIS 564 (Miss. Ct. App. 2005).

In an action for benefits under the Mississippi Employment Security Law in which an employee claimed that she suffered tremendous emotional trauma while working for the Mississippi Department of Corrections, the employee did not meet her burden of establishing good cause to leave her job, as the employee failed to testify before a referee at a telephonic

review hearing or present any evidence at that time. Washington v. Miss. Empl. Sec. Comm'n, 921 So. 2d 390, 2005 Miss. App. LEXIS 851 (Miss. Ct. App. 2005), cert. denied, 549 U.S. 837, 127 S. Ct. 352, 166 L. Ed. 2d 64, 2006 U.S. LEXIS 6470 (U.S. 2006), cert. denied, 926 So. 2d 922, 2006 Miss. LEXIS 168 (Miss. 2006).

Teacher's assistant was disqualified from receiving unemployment benefits because she left work voluntarily without good cause. While she hoped to find a job that paid more money, she could have continued working for the school district. Mahaffey v. Miss. Empl. Sec. Comm'n, 912 So. 2d 496, 2005 Miss. App. LEXIS 730 (Miss. Ct. App. 2005).

Trial court's decision to reverse the finding of the Mississippi Employment Security Commission (MESC) Board of Review that the employee had quit her job voluntarily, as it was not supported by substantial evidence, was proper, as the employer made no reference to the employee quitting her job to move to Alabama in his testimony and only made the statement during an interview with a member of the MESC. Further, the employee denied ever making the statement to the employer. Gilbreath v. Miss. Empl. Sec. Comm'n, 910 So. 2d 682, 2005 Miss. App. LEXIS 177 (Miss. Ct. App. 2005).

While the employee's feeling that she was mistreated by not having been paid time and a half for working on a holiday may have been appropriate (she had failed to work the preceding day so as to have been eligible for said pay), such an isolated incident, without more, was not a justification for her leaving said employment without notice and not returning. Moreover, on appeal, she claimed she left work for health-related reasons, and that claim was not substantiated; thus, the agency's decision, that she left her job voluntarily without good cause and was not entitled to benefits, was supported by substantial evidence. Daniels v. Miss. Empl. Sec. Comm'n, 904 So. 2d 1195, 2004 Miss. App. LEXIS 1038 (Miss. Ct. App. 2004).

Substantial evidence supported the finding that the employee's physician did not advise the employee to leave his job because of the employee's health concerns; the finding that the employee failed to prove good cause was also supported by his negligible effort to resolve the problem with the employer prior to uitting. Hudson v. Miss. Empl. Sec. Comm'n, 869 So. 2d 1065, 2004 Miss. App. LEXIS 284 (Miss. Ct. App. 2004).

The claimant was not entitled to unemployment compensation benefits where there was no direct evidence presented to prove that the claimant was fired from his job other than the claimant's own testimony and the employer provided multiple witnesses to corroborate that the claimant was not fired from his position, but rather quit his job by not returning to work. NCI Bldg. Components v. Berry, 811 So. 2d 321, 2001 Miss. App. LEXIS 35 (Miss. Ct. App. 2001).

Substantial evidence supported the determination that the claimant voluntarily left his employment without good cause where (1) on his last day of employment, he was told by his supervisor that work was ready and available and that he would consider that the claimant had quit if he walked off the job, and (2) the claimant replied, "well whatever you want" and left. Hodge v. Mississippi Empl. Sec. Comm'n, 757 So. 2d 268, 2000 Miss. LEXIS 88 (Miss. 2000).

The board's finding of fact that the claimant voluntarily quit her employment without good cause was not supported by substantial evidence where the claimant testified (1) that she informed her supervisor that she would have to find another job if her working conditions did not improve but assured her supervisor that she would stay as long as she possibly could, (2) that the supervisor then stated that the employer would have to find someone else and that she assured the supervisor that she would give two weeks notice if she did leave, (3) that she asked the supervisor if she was trying to get rid of her and that the supervisor giggled and stated, "I'm hiring somebody else," and (4) that she believed she had been terminated and did not again report to work. Huckabee v. Mississippi Empl. Sec. Comm'n, 735 So. 2d 390, 1999 Miss. LEXIS 143 (Miss. 1999).

Substantial evidence supported the determination that the claimant voluntarily quit her employment without good cause and that she was not constructively discharged where (1) the claimant was told by her manager that she was hiring someone else for her position only after she informed her manager that she was looking for other employment, (2) on the next day, the claimant did not show up for work as scheduled and, instead, called and asked for her paycheck before it was due, and (3) she was informed that she would have to turn in her uniforms before receiving her paycheck. Huckabee v. Mississippi Empl. Sec. Comm'n, 722 So. 2d 590, 1998 Miss. LEXIS 519 (Miss. 1998).

Employee who quit her job with county circuit clerk's office upon receiving demotion for violating office personnel policy voluntarily quit her job without good cause, such that she was not entitled to unemployment benefits; it was office policy that staff members could not campaign or solicit votes for candidates during work hours and employee received envelope containing campaign literature from circuit clerk candidate during work hours and showed other employees the campaign literature and thus, she was properly disciplined for direct violation of office policy. Mississippi Empl. Sec. Comm'n v. Lee, 674 So. 2d 512, 1996 Miss. LEXIS 264 (Miss. 1996).

The voluntary retirement of an employee who remained available for suitable work disqualified her for unemployment benefits, even though the retirement was induced by the fact that the retirement benefits far exceeded her earnings from the 2 hours per week that she was permitted to work, where the employee had worked 2 to 4 hours per week for several years, and though she was told that her hours might be cut back, she was never told that they were going to be cut; since there was no change in the employee's employment status, there was no evidence that any good cause factor played a role in her decision to relinquish her employment. Mississippi Employment Sec. Com. v. Gaines, 580 So. 2d 1230, 1991 Miss. LEXIS 313 (Miss. 1991).

Where an employee's hours have been drastically reduced to a point that there is no continued employment in any real sense, the employee may be eligible for benefits, and the fact that such an employee chooses retirement rather than resignation as a matter of effectuating a termination of employment may be considered but is not controlling on the issue of whether that termination was with or without good cause. The question is in all instances whether there was a "good cause" factor but for which there would have been no relinquishment of employment. Although the availability of retirement benefits in excess of salary is not such a "good cause" factor, that availability does not negate the possibility that some other good cause factor existed. To the extent that there is prima facie evidence of some other good cause factor, the burden is upon the employer to negate it as a "but for" cause of quitting. Mississippi Employment Sec. Com. v. Gaines, 580 So. 2d 1230, 1991 Miss. LEXIS 313 (Miss. 1991).

Decision of referee that claimant had not shown good cause for leaving her job was upheld where testimony showed that claimant's shift was being changed from evening to day and employer denied allegations that claimant was being placed on part-time basis and was losing her vacation time and paid holidays. Melody Manor, Inc. v. McLeod, 511 So. 2d 1383, 1987 Miss. LEXIS 2706 (Miss. 1987).

Statute (§ 71-5-513) which prohibits payment of unemployment benefits to wife who leaves employment in state to accompany husband to another state does not violate equal protection or due process. Warren v. Board of Review, 463 So. 2d 1076, 1985 Miss. LEXIS 1879 (Miss. 1985).

An employee was not entitled to unemployment compensation benefits where he admitted that he had quit because in his opinion the volume of his employer's work had not been sufficient for his satisfaction. Mississippi Employment Sec. Com. v. Benson, 401 So. 2d 1303, 1981 Miss. LEXIS 2073 (Miss. 1981).

A woman who, pursuant to an agreement with her employer, left work temporarily to have a baby, and who was laid off during that period due to a lack of work, did not leave work voluntarily without good cause within the meaning of § 71-5-513. Smith v. Mississippi Employment

Sec. Comm'n, 344 So. 2d 137, 1977 Miss. LEXIS 2425 (Miss. 1977).

Where evidence amply supported the finding of the commission, that an employee who quit her job in a moment of pique during a brief misunderstanding with her employer had quit suitable employment voluntarily and was not entitled to benefits, the court was without statutory authority to enter a contrary judgment. Mississippi Employment Sec. Com. v. Rakestraw, 254 Miss. 56, 179 So. 2d 830, 1965 Miss. LEXIS 923 (Miss. 1965).

A claimant who quits her employment because she can no longer arrange transportation to work has left her work voluntarily and without good cause. Mississippi Employment Sec. Com. v. Ballard, 252 Miss. 418, 174 So. 2d 367, 1965 Miss. LEXIS 1114 (Miss. 1965).

Where an individual is possessed of a suitable job and gives it up to become self-employed, he, and not the unemployment fund, assumes the risk, for it was never intended that the statute would underwrite such a venture. Mississippi Employment Sec. Com. v. Medlin, 252 Miss. 146, 171 So. 2d 496, 1965 Miss. LEXIS 1085 (Miss. 1965).

To hold that leaving employment to enter self-employment is "good cause" within the meaning of this section [Code 1942, § 7379] would establish the unemployment compensation fund as an insurance fund for employees who decide to leave employment to enter business for themselves, and a claimant who enters business for himself and later fails cannot fall back on compensation benefits. Mississippi Employment Sec. Com. v. Medlin, 252 Miss. 146, 171 So. 2d 496, 1965 Miss. LEXIS 1085 (Miss. 1965).

A married woman who leaves her employment because of pregnancy is considered to have done so without good cause within the meaning of the statute. Mississippi Employment Sec. Com. v. Corley, 246 Miss. 43, 148 So. 2d 715, 1963 Miss. LEXIS 415 (Miss. 1963).

Pregnancy of a married woman is a condition arising out of "marital, filial and domestic circumstances and obligations" within the provision that one leaving work by reason of such conditions is not entitled to unemployment compensation benefits. Luke v. Mississippi Employment Sec. Com., 239 Miss. 292, 123 So. 2d 231, 123 So. 2d 696, 1960 Miss. LEXIS 285 (Miss. 1960).

7. Availability for work.

An employee was offered "suitable" employment, such that his refusal to work amounted to a voluntary termination of work and rendered him ineligible for unemployment compensation benefits, where he was originally hired to collect some old accounts, he was offered a position as a sales person when most of the collection problems had been resolved, and he declined the work due to the slightly increased hours of the new position. Sunbelt Ford-Mercury, Inc. v. Mississippi Employment Sec. Com., 552 So. 2d 117, 1989 Miss. LEXIS 469 (Miss. 1989).

Long-distance telephone operators who declined offers to transfer to neighboring towns when their office was closed were improperly granted unemployment insurance where the distance to be traveled did not render the available work unsuitable and where few such jobs were available in the city in which they had been working; thus, the operators had unreasonably restricted the terms and conditions under which they would accept employment and were not "available for work." South Cent. Bell Tel. Co. v. Mississippi Employment Sec. Com., 357 So. 2d 312, 1978 Miss. LEXIS 2503 (Miss. 1978).

A refusal by a labor union member to accept an offer of employment at the prevailing wage is not for good cause, so as to entitle him to unemployment compensation, because by accepting employment at less than the rate he would lose union status, where resignation from the union was not a condition of employment. Mississippi Employment Sec. Com. v. Mixon, 248 Miss. 399, 159 So. 2d 181, 1964 Miss. LEXIS 268 (Miss. 1964).

A finding that the employment offered to an unemployment compensation claimant was at not less than the prevailing wage is supported by evidence that the wage at the place of employment was that paid when the job was started, although less than the scale to which claimant's labor union had subsequently increased its rate. Mississippi Employment Sec.

Com. v. Mixon, 248 Miss. 399, 159 So. 2d 181, 1964 Miss. LEXIS 268 (Miss. 1964).

The test of availability for work is subjective in nature and must depend in part on the circumstances of each case; A factor to be considered is whether claimant wants to go to work or is content to remain idle. Mississippi Employment Sec. Com. v. Blasingame, 237 Miss. 744, 116 So. 2d 213, 1959 Miss. LEXIS 527 (Miss. 1959).

"Available for work" implies that in order to be entitled to unemployment benefits one must be willing to accept any suitable work which may be offered without attaching conditions not usual or customary in that occupation but which fit his particular circumstances. Mississippi Employment Sec. Com. v. Blasingame, 237 Miss. 744, 116 So. 2d 213, 1959 Miss. LEXIS 527 (Miss. 1959).

One limiting availability for work to certain hours is not entitled to unemployment benefits, though limitation is due to lack of transportation at other hours. Mississippi Employment Sec. Com. v. Blasingame, 237 Miss. 744, 116 So. 2d 213, 1959 Miss. LEXIS 527 (Miss. 1959).

8. Misconduct discharge, generally.

In a case in which a claimant appealed from a county circuit court's judgment affirming a Board of Review's decision to deny him unemployment benefits, the appellate court found no error. The Board's finding that the claimant had committed misconduct for his fifth violation of sleeping on the job after receiving two verbal warnings and two written warnings for sleeping on the job was supported by substantial evidence and was not arbitrary or capricious or contrary to law. Woods v. Miss. Dep't of Empl. Sec., 313 So. 3d 525, 2021 Miss. App. LEXIS 112 (Miss. Ct. App. 2021).

After the Mississippi Department of Employment Security (MDES) initially disqualified a former employee from unemployment benefits due to allegedly being discharged from employment for misconduct, it was not error for the Board of Review of the MDES to reverse that decision because the employer did not meet its burden to show the employee was discharged for misconduct, when the employer did not appear at a de novo hearing, as the employer had adequate notice of that hearing. Over The Rainbow Daycare v. Miss. Dep't of Empl. Sec., 188 So. 3d 1249, 2016 Miss. App. LEXIS 161 (Miss. Ct. App. 2016).

Employee was improperly denied unemployment benefits because her conduct did not amount to insubordination, her actions did not violate the employee handbook, her single incident of disrespectful behavior was not misconduct where there was no constant and continual direct order to do anything, and she was never warned that she would be fired. Gammage v. Miss. Dep't of Empl. Sec., 113 So. 3d 1294, 2013 Miss. App. LEXIS 293 (Miss. Ct. App. 2013).

Employee sought unemployment benefits after she was terminated from her employment with a city. A circuit court did not err in determining employee was entitled to benefits because the city failed to meet its burden of establishing substantial, clear, and convincing proof that the employee was discharged for misconduct. Miss. Empl. Sec. Comm'n v. Johnson, 9 So. 3d 1170, 2009 Miss. App. LEXIS 150 (Miss. Ct. App. 2009).

Terminated employee was insubordinate in taking unauthorized pictures at work and refusing to listen to his supervisors as to the proper use of the heavy equipment that the employee operated. The employee's insubordination constituted misconduct. Pannell v. Tombigbee River Valley Water Mgmt. Dist., 909 So. 2d 1115, 2005 Miss. LEXIS 373 (Miss. 2005).

Clear and convincing evidence, in the testimony of the employee's supervisors and coworkers, existed to show that a terminated employee's conduct in operating heavy equipment in an unsafe manner warranted disqualification of unemployment benefits under Miss. Code Ann. § 71-5-513(A)(1)(b). Pannell v. Tombigbee River Valley Water Mgmt. Dist., 909 So. 2d 1115, 2005 Miss. LEXIS 373 (Miss. 2005).

There was substantial evidence to indicate that the employee violated the employer's policy prohibiting possession of a Zip drive on company premises. Further, substantial evidence was presented that the employee had knowledge that such action constituted a violation of company policy; therefore, the Mississippi Employment Security Commission Board of Review's decision to deny unemployment benefits was not arbitrary or capricious, as the employee's actions constituted misconduct connected with his work. Howell v. Miss. Empl. Sec. Comm'n, 906 So. 2d 766, 2004 Miss. App. LEXIS 1145 (Miss. Ct. App. 2004).

Employee's conduct in getting into a physical altercation with another employee constituted disqualifying misconduct as to unemployment benefits; the employee's conduct violated the employer's standard of behavior and rose to the level of misconduct. Welch v. Miss. Empl. Sec. Comm'n, 904 So. 2d 1200, 2004 Miss. App. LEXIS 1033 (Miss. Ct. App. 2004).

Meaning of the term "misconduct," as used in the unemployment compensation statute, is conduct evincing such willful and wanton disregard of the employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect from his employee. Scott v. Miss. Empl. Sec. Comm'n, 892 So. 2d 291, 2004 Miss. App. LEXIS 1051 (Miss. Ct. App. 2004).

Carelessness and negligence of such degree, or recurrence as to manifest culpability, wrongful intent or evil design, and showing an intentional or substantial disregard of the employer's interest or of the employee's duties and obligations to his employer, comes within the meaning of the term misconduct. Scott v. Miss. Empl. Sec. Comm'n, 892 So. 2d 291, 2004 Miss. App. LEXIS 1051 (Miss. Ct. App. 2004).

Mississippi Employment Security Commission Administrative Manual, pt. V, para. 1720, states that an employee shall not be found guilty of misconduct for violation of a rule unless: (1) the employee knew or should have known of the rule, (2) the rule was lawful and reasonably related to the job environment and job performance, and (3) the rule is fairly and consistently enforced. Scott v. Miss. Empl. Sec. Comm'n, 892 So. 2d 291, 2004 Miss. App. LEXIS 1051 (Miss. Ct. App. 2004).

Insubordination is within the scope of misconduct disqualifying an applicant from receiving unemployment benefits. Scott v. Miss. Empl. Sec. Comm'n, 892 So. 2d 291, 2004 Miss. App. LEXIS 1051 (Miss. Ct. App. 2004).

Employee insubordination amounting to misconduct disqualifying an applicant from receiving unemployment benefits is defined as a constant or continuing intentional refusal to obey a direct or implied order, reasonable in nature, and given by and with proper authority. Scott v. Miss. Empl. Sec. Comm'n, 892 So. 2d 291, 2004 Miss. App. LEXIS 1051 (Miss. Ct. App. 2004).

Credible evidence supported the Mississippi Employment Security Commission's decision that the claimant was disqualified from receiving unemployment benefits because her actions in refusing to comply with company policy regarding working closing shifts constituted misconduct as defined in Miss. Code Ann. § 71-5-513(A) (1)(b). The circuit court used an improper standard of review because the fact that the Commission's decision conflicted with the decisions of the claims examiner and the appeal's referee did not, in and of itself, make the Commission's decision arbitrary, capricious and not supported by substantial evidence and the applicable law. Miss. Empl. Sec. Comm'n v. Noil, 878 So. 2d 1089, 2004 Miss. App. LEXIS 723 (Miss. Ct. App. 2004).

A person who secretly records a conference with his employer for his protection has not engaged in misconduct which will preclude his receipt of unemployment compensation. Campbell v. Mississippi Empl. Sec. Comm'n, 782 So. 2d 751, 2000 Miss. App. LEXIS 331 (Miss. Ct. App. 2000).

Unemployment compensation claimant's failure to pass physical fitness test required to receive certification as police officer after his first year of employment was "misconduct" disqualifying him from receiving benefits; claimant's actions were clearly in wanton disregard of employer's interest, and claimant had ability to pass physical test within his personal control but evidence showed that he did not attempt to keep his physical fitness up to standards required to pass test. City of Clarksdale v. Mississippi Empl. Sec. Comm'n, 699 So. 2d 578, 1997 Miss. LEXIS 387 (Miss. 1997).

"Misconduct" disqualifying claimant from receiving unemployment compensation benefits imports conduct that reasonable and fair-minded external observers would consider wanton disregard of employer's legitimate interests; something more than mere negligence must be shown, although repeated neglect of employer's interests may rise to dignity of misconduct. City of Clarksdale v. Mississippi Empl. Sec. Comm'n, 699 So. 2d 578, 1997 Miss. LEXIS 387 (Miss. 1997).

While excessive absenteeism could constitute misconduct, this does not mean that excessive absenteeism would qualify as misconduct in all circumstances. Barnett v. Mississippi Employment Sec. Com., 583 So. 2d 193, 1991 Miss. LEXIS 395 (Miss. 1991).

Insubordination is misconduct within the Mississippi Employment Security Law, "ordinarily adequate that benefits be denied." Mississippi Employment Sec. Com. v. McGlothin, 556 So. 2d 324, 1990 Miss. LEXIS 5 (Miss.), cert. denied, 498 U.S. 879, 111 S. Ct. 211, 112 L. Ed. 2d 171, 1990 U.S. LEXIS 4937 (U.S. 1990).

A constant or continuing intentional refusal to obey a direct or implied order, reasonable in nature, and given by and with proper authority, constitutes insubordination. Insubordination is included within the scope of "misconduct." Shannon Engineering & Constr., Inc. v. Mississippi Employment Sec. Com., 549 So. 2d 446, 1989 Miss. LEXIS 426 (Miss. 1989).

A school teacher is "discharged" within the meaning of § 71-5-513, whether he or she has been fired or simply not reemployed, and if a school district can demonstrate that the teacher's non-reemployment was because of misconduct connected with his or her work, the teacher is ineligible for benefits and the school district may not be required to make any reimbursements to the Mississippi Employment Sec. Comm'n v. Philadelphia Mun. Separate Sch. Dist., 437 So. 2d 388, 1983 Miss. LEXIS 2840 (Miss. 1983).

8. —Held disqualification.

Sufficient evidence supported findings that a county board of supervisors employee was disqualified under the statute from receiving unemployment benefits due to his misconduct in sending threatening electronic messages to several board members to extend his resignation date. Sullivan v. Miss. Dep't of Empl. Sec. & Monroe County Bd. of Supervisors, — So. 3d —, 2020 Miss. App. LEXIS 559 (Miss. Ct. App. Sept. 29, 2020), cert. denied, 314 So. 3d 1164, 2021 Miss. LEXIS 95 (Miss. 2021).

Denial of unemployment benefits to a claimant was appropriate because the claimant's deliberate action of going outside of the employer's store to the parking lot and engaging in a physical altercation with a customer constituted misconduct that disqualified the claimant from receiving unemployment benefits. The claimant's conduct was against the employer's workplace-violence policy and constituted a willful and wanton disregard for the employer's interests. Conner v. Miss. Dep't of Empl. Sec., 247 So. 3d 341, 2018 Miss. App. LEXIS 247 (Miss. Ct. App. 2018).

There was no reason to disturb the decision to deny unemployment benefits to the employee, as she exhibited misconduct; her supervisor testified that the employee was notorious for avoiding customers and she had previously refused to assist them and refused to follow instructions, plus since learning about cutbacks, the employee was rude, sullen and nonresponsive, which demonstrated a pattern of refusal to obey orders, constituting insubordination. Bounds v. Miss. Dep't of Empl. Sec., 271 So. 3d 634, 2018 Miss. App. LEXIS 576 (Miss. Ct. App. 2018).

Circuit court properly affirmed the denial of unemployment benefits by the Mississippi Department of Employment Security Board of Review to a former employee and denied and dismissed her appeal because the employee admitted that the record reflected deficiencies in her job performance and did not contest the right of the employer to terminate her, the employee admitted to management she knew how to perform her job tasks, and her repeated errors, taken as a whole, demonstrated a substantial disregard of the employer's interests or of the employee's duties and obligations to the employer as to constitute "misconduct." Windham v. Miss. Dep't of Empl. Sec., 207 So. 3d 1249, 2017 Miss. App. LEXIS 3 (Miss. Ct. App. 2017).

Circuit court properly affirmed the decision of the Board of Review of the Mississippi Department of Employment Security denying the former employee's claim for unemployment benefits as the Board found that he was disqualified from receiving benefits based on his misconduct because it was evident that the employee's racially charged comments amounted to an intentional disregard of the standards of behavior which his employer had the right to expect from him; and his conduct evidenced a complete disregard of his employer's interest. Kidd v. Miss. Dep't of Empl. Sec., 202 So. 3d 1283, 2016 Miss. App. LEXIS 381 (Miss. Ct. App. 2016).

Claimant was properly denied unemployment benefits as he was fired for willful misconduct because the claimant, the only security guard on duty at the hospital, failed to stop people from entering the emergency room (ER) and maintain control as the video footage of the incident revealed that the claimant failed to make any attempt to assist the victim, lock the ER doors, or restore order; he allowed several people into the ER, stayed in the security booth for several minutes, and did not assist the shooting victim; his actions directly violated the employer's procedure for locking down the ER when there was a gunshot victim; and he acted with willful and wanton disregard for the hospital's procedures and policies. Fisher v. Miss. Dep't of Empl. Sec., 176 So. 3d 141, 2015 Miss. App. LEXIS 509 (Miss. Ct. App. 2015).

Although appellant claimed that she did not have a broom and did not refuse to sweep her work area, it was the Board of Review's prerogative to believe the boss's testimony over appellant's in finding the company proved misconduct. Substantial evidence supported the Board's denial of unemployment benefits based on appellant's insubordination. Seago v. Miss. Dep't of Empl. Sec., 158 So. 3d 392, 2015 Miss. App. LEXIS 96 (Miss. Ct. App. 2015).

Circuit court properly affirmed a decision by the Department of Employment Security Board of Review denying an employee benefits because substantial evidence supported the Board's determination that the employee was discharged for misconduct where the employer had a three-day no call/no show policy and it was within the Board's authority to find the employer's testimony more credible and determine that the employee had three consecutive absences without giving notice in violation of the policy. Hemphill v. Miss. Dep't of Empl. Sec., 152 So. 3d 1226, 2014 Miss. App. LEXIS 724 (Miss. Ct. App. 2014).

Circuit court properly affirmed the denial of a school employee's request for unemployment benefits due to "disqualifying misconduct" because she had received three written warnings based on her repeated refusal or failure to follow directive given by her immediate supervisor or the school's principal, she did not cite any authority to support her argument that she was unjustly denied unemployment benefits, and there was substantial evidence in the record to support the finding of misconduct. Thomas v. Miss. Dep't, 151 So. 3d 233, 2014 Miss. App. LEXIS 622 (Miss. Ct. App. 2014).

Employee's application for unemployment benefits was properly denied because she was discharged due to the misconduct of her excessive tardiness and absences in violation of the employer's attendance policy where she was aware of the employer's attendance policy, her excessive tardies and absences were properly documented, she was given the warnings required under the policy, and she failed to adjust her work schedule to avoid being tardy. Anthony v. Miss. Dep't of Empl. Sec., 169 So. 3d 929, 2014 Miss. App. LEXIS 340 (Miss. Ct. App. 2014).

Claimant was ineligible to receive unemployment benefits because she was aware of her employer's attendance policy; her excessive tardies were properly documented, and she was given the warnings required under the policy; and the violation of the employer's attendance policy constituted misconduct. Gibson v. Miss. Dep't of Empl. Sec., 130 So. 3d 563, 2014 Miss. App. LEXIS 33 (Miss. Ct. App. 2014).

Court of appeals erred by reevaluating the evidence and substituting its judgment for that of the Mississippi Employment Security Commission (MESC) because the MESC's decision that an employer did not prove misconduct was supported by substantial evidence; the evidence substantially supported the MESC's conclusion that the employer did not prove that an employee falsified her time sheets, and it found evidence of the employee's inefficient use of technology, not falsification of hours worked. Jackson County Bd. of Supervisors v. Miss. Empl. Sec. Comm'n, 129 So. 3d 178, 2013 Miss. LEXIS 641 (Miss. 2013).

Substantial evidence showed that a former employee committed misconduct sufficient to warrant a reversal of an award of unemployment benefits because the owner of the employee's former employer and the employee's former sales manager testified, contrary to the employee's testimony, that the employee refused to retake a State of Mississippi mandatory licensing exam after the employee had failed a previous exam and that the employee continued to improperly complete paperwork and sales contracts after being warned to correct the employee's errors. Hunter v. Miss. Dep't of Empl. Sec., 120 So. 3d 435, 2013 Miss. App. LEXIS 265 (Miss. Ct. App. 2013).

Employee was properly disqualified from receiving unemployment benefits under Miss. Code Ann. § 71-5-513(A)(1)(b) because, while there was little evidence concerning the alleged customers' complaints, there was substantial evidence that the employee's insubordination in continuously refusing to meet with the employee's superiors to address business concerns constituted misconduct. Garrard v. Miss. Dep't of Empl. Sec., 111 So. 3d 687, 2013 Miss. App. LEXIS 152 (Miss. Ct. App. 2013).

Teacher was not entitled to receive unemployment benefits because the teacher's conduct of continuously and intentionally disobeying a directive from her supervisors amounted to misconduct under Miss. Code Ann. § 71-5-513(A)(1)(b), especially since the teacher was aware that she could be moved to a different facility and that her failure to report to a new facility would jeopardize her employment. Buller v. Miss. Dep't of Empl. Sec., 111 So. 3d 1276, 2013 Miss. App. LEXIS 180 (Miss. Ct. App. 2013).

Substantial evidence under Miss. Code Ann. 71-5-531 supported the denial of unemployment benefits to a claimant as her actions constituted misconduct under Miss. Code Ann § 71-5-513 as she was terminated for insubordination where: (1) she shut down her machine without supervisor approval and refused to sign the written warning detailing her actions; (2) she was loud and argumentative during the write-up and when she arrived to pick up her paycheck; and (3) she showed up to work two hours prior to the time she was instructed. Lee v. Miss. Empl. Sec. Comm'n, 105 So. 3d 1156, 2012 Miss. App. LEXIS 804 (Miss. Ct. App. 2012).

Unemployment benefits claimant was terminated for misconduct under Miss. Code Ann. § 71-5-513(A)(1)(b) and was properly denied benefits where: (1) he failed to properly spot a lift or to sound an alarm to warn that a lift was in danger of colliding with an airplane; (2) the claimant left his assigned station at the time of the collision, and had he remained at his station, he would have observed the lift in time to warn the lift operator; and (3) the claimant was terminated for violating and not following proper safety procedures, causing aircraft damage. Williams v. Miss. Dep't of Empl. Sec., 99 So. 3d 258, 2012 Miss. App. LEXIS 613 (Miss. Ct. App. 2012).

Substantial evidence supported denial of unemployment benefits to a former employee based on misconduct by the employee where there was evidence that the employee accused a customer of racism, the employee refused to apologize to the customer, and the employee gave false statements to her employer during an investigation of the customer's complaint against the employee. Patterson v. Miss. Dep't of Empl. Sec., 95 So. 3d 719, 2012 Miss. App. LEXIS 482 (Miss. Ct. App. 2012).

Employee admitted that she took her break early and that she ignored a direct instruction from her supervisor as to when she was allowed to leave her station. As such, the employee's pattern of negligent conduct constituted misconduct connected with her work which disqualified her for unemployment benefits under Miss. Code Ann. § 71-5-513(A)(1)(b). Brooks v. Northwood Country Club, 19 So. 3d 164, 2009 Miss. App. LEXIS 699 (Miss. Ct. App. 2009).

Where the employee came to work smelling of alcohol, a test administered by a nurse in the employer's first-aid office revealed that the employee's alcohol level was 106.3 milligrams in violation of the company's policy. The employee's actions qualified as "misconduct" for purposes of Miss. Code Ann. § 71-5-513(A)(1)(b); therefore, he was disqualified from receiving unemployment benefits. Miss. Dep't Empl. Sec. v. Clark, 13 So. 3d 866, 2009 Miss. App. LEXIS 456 (Miss. Ct. App. 2009).

Where an attorney appealed the denial of unemployment benefits, sufficient evidence supported the decision to deny the attorney unemployment benefits because the evidence supported the finding of misconduct based on the attorney's failure to complete tasks adequately. Cummings v. Miss. Dep't of Empl. Sec., 980 So. 2d 340, 2008 Miss. App. LEXIS 251 (Miss. Ct. App. 2008).

Board of Review of the Mississippi Department of Employment Security did not err in denying the employee benefits where she repeatedly acted in disregard of company policy, Miss. Code Ann. § 71-5-513(A)(1)(c), and she was aware of the casino's policy that required her to radio another security officer if she needed to leave her post; under Miss. R. Evid. 801(d)(2), the employee's own statements were not hearsay and supported the denial of her employment benefits. Austin v. Miss. Dep't of Empl. Sec., 976 So. 2d 969, 2008 Miss. App. LEXIS 138 (Miss. Ct. App. 2008).

Regardless of whether the residuum rule was applied or not, there was substantial, credible, corroborated evidence of a claimant's multiple acts of insubordination constituting "misconduct" contained in summaries of personnel records based on personal knowledge which were a proper basis for denying unemployment benefits to the claimant; that testimony revealed that many of the relevant records were based on the personal knowledge of the preparer of the individual complaints against the claimant pursuant to Miss. R. Evid. 803(6) and comment. McClinton v. Miss. Dep't of Empl. Sec., 949 So. 2d 805, 2006 Miss. App. LEXIS 766 (Miss. Ct. App. 2006).

Because (1) the claimant had been trained regarding completion of his time reports; (2) the falsification policy regarding time reports was posted on the Internet for all employees to access through computers made available to them; (3) the claimant had been counseled by management regarding discrepancies for a previous incident; and (4) he had been suspended for three days because of other policy violations, the claimant's repeated insertion of incongruent times on his time and overtime reports constituted falsification of records and was disqualifying misconduct within the meaning of Miss. Code Ann. § 71-5-513(A)(1)(b) and Mississippi case law. Therefore, the claimant was not entitled to receive unemployment benefits from the Mississippi Employment Security Commission. Ramsey v. Miss. Empl. Sec. Comm'n, 919 So. 2d 255, 2005 Miss. App. LEXIS 437 (Miss. Ct. App. 2005).

Finding that the employee had not engaged in misconduct while on the job in an action concerning the denial of unemployment benefits was inappropriate based on the record; even the employee's testimony demonstrated that she did not return to work after November 21, 2003, and did not provide her employer with a promised doctor's excuse. Bedford Care Ctr. v. Kirk, 935 So. 2d 1135, 2006 Miss. App. LEXIS 573 (Miss. Ct. App. 2006).

Pursuant to Miss. Code Ann. § 71-5-513(A)(1)(b), a corrections employee was not entitled to unemployment benefits after she was terminated where she admitted to distributing bootleg copies of DVDs to coworkers while at work; she also admitted knowing that distributing bootleg copies of DVDs was illegal. Miss. Dep't of Corr. v. Scott, 929 So. 2d 975, 2006 Miss. App. LEXIS 376 (Miss. Ct. App. 2006).

Employee admitted she voluntarily left her job in Mississippi to pursue educational opportunities. Thus, pursuant to Miss. Code Ann. § 71-5-513 A(1)(a) she was not entitled to unemployment benefits, and under Miss. Code Ann. § 71-5-19(4), she was obligated to repay the benefits to which she was not entitled. Westbrook v. Miss. Empl. Sec. Comm'n, 910 So. 2d 1135, 2005 Miss. App. LEXIS 203 (Miss. Ct. App. 2005).

Where an employee refused to participate in the fire watch training program, he was terminated for misconduct and rendered ineligible to receive unemployment benefits. Scott v. Miss. Empl. Sec. Comm'n, 892 So. 2d 291, 2004 Miss. App. LEXIS 1051 (Miss. Ct. App. 2004).

Employee's application for unemployment benefits was properly denied where the record showed the employee left work on his lunch break without permission, did not inform his supervisor, and did not return for the rest of the day. The employee's assertion of chest pains was not credible in light of other evidence, nor was his assertion that he was unable to inform his supervisor of the situation; the employee disregarded standards of behavior that his employer had the right to expect to have acted on where the employer had an established rule that notice in such circumstances was required. Dillon v. Miss. Empl. Sec. Comm'n, 883 So. 2d 1193, 2004 Miss. App. LEXIS 966 (Miss. Ct. App. 2004).

Miss. Code Ann. § 71-7-13(3) provided that an employee discharged on the basis of a confirmed positive drug and alcohol test would be considered to have been discharged for willful misconduct; the evidence and testimony contained in the record clearly showed that the employee tested positive for marijuana on the random drug test, and nothing in the record supported the employee's claim that he was "set up" or that his urine was switched, such that the record contained sufficient evidence to support the conclusion that the employee's actions constituted disqualifying misconduct. Curtis v. Miss. Empl. Sec. Comm'n, 878 So. 2d 1094, 2004 Miss. App. LEXIS 712 (Miss. Ct. App. 2004).

Employee's absenteeism, combined with the failure to give notice to an employer of an absence despite being warned, provided substantial evidence for a finding of willful misconduct in a hearing to determine eligibility for unemployment benefits; the court rejected the employee's argument regarding compliance with the literal language of the policy because the employee understood the requirement of reporting an absence of at least 30 minutes prior to the beginning of a shift, and, although some of the absences might have been excused under the Family and Medical Leave Act, the employee failed to bring this to the attention of a supervisor. McNeil v. Miss. Empl. Sec. Comm'n, 875 So. 2d 221, 2004 Miss. App. LEXIS 236 (Miss. Ct. App. 2004).

Substantial evidence supported the Mississippi Employment Security Commission's finding of misconduct by the employee so as to deny the employee unemployment benefits; the employee's four consecutive absences were sufficient to establish a willful and wanton disregard of the employer's attendance policy. Miss. Empl. Sec. Comm'n v. Danner, 867 So. 2d 1050, 2004 Miss. App. LEXIS 208 (Miss. Ct. App. 2004).

Where employee at a casino accepted a gratuity from a patron in the form of a "comp ticket," which security guards were not allowed to give under the employer's established policy, this constituted wilful misconduct, and the employee was not entitled to unemployment benefits. Hardy v. Miss. Empl. Sec. Comm'n, 864 So. 2d 1045, 2004 Miss. App. LEXIS 69 (Miss. Ct. App. 2004).

Claimant was properly disqualified from receiving unemployment benefits where the claimant willfully violated USDA guidelines regarding the safe handling of meat and meat products, such that his actions constituted misconduct. McGee v. Miss. Empl. Sec. Comm'n, 876 So. 2d 425, 2004 Miss. App. LEXIS 325 (Miss. Ct. App. 2004).

Substantial evidence in the record supported a determination by the Mississippi Employment Security Commission that the employee's persistent failure to perform easily-accomplished but nevertheless important duties of her job demonstrated carelessness and negligence of such degree, or recurrence thereof, as to manifest culpability showing an intentional disregard of the employer's interest; such a finding required that the employee be disqualified from receiving unemployment compensation benefits. Miss. Empl. Sec. Comm'n v. Claiborne, 872 So. 2d 698, 2004 Miss. App. LEXIS 381 (Miss. Ct. App. 2004).

Pursuant to Miss. Code Ann. §§ 71-5-531 and 71-5-513, the decision of the Mississippi Employment Security Commission denying the claimant unemployment benefits on the basis of misconduct was arbitrary, capricious, and improper because the employer failed to demonstrate by substantial, clear, and convincing evidence that the claimant was terminated for misconduct since (1) the employer did not prove that the claimant received training in the handling of dirty linen; (2) there was no evidence that the claimant had been given a copy of the infection control manual or that he had even seen it before; (3) the employer admitted that the conduct of bringing dirty linen through the clean linen door on one occasion was not grounds for termination. Gordon v. Miss. Empl. Sec. Comm'n, 864 So. 2d 1013, 2004 Miss. App. LEXIS 51 (Miss. Ct. App. 2004).

If an employer wishes to disqualify an employee for failing a federally-regulated drug test, pursuant to 49 U.S.C.S. § 31306, in which a split specimen was taken, it must produce clear and convincing evidence that the split specimen was reconfirmed positive or that the employee declined to discuss the result with a medical review officer pursuant to 49 C.F.R. § 40.33(c); doing so will satisfy the "misconduct" requirement of Miss. Code Ann. § 71-5-513A(1)(b). Southwood Door Co. v. Burton, 847 So. 2d 833, 2003 Miss. LEXIS 276 (Miss. 2003).

In order to establish a federal Department of Transportation-regulated employee's ineligibility for state unemployment benefits because of a positive drug or alcohol test result pursuant to 49 U.S.C.S. § 31306, there must be clear and convincing evidence that the testing was conducted according to the federal guidelines; because no evidence was produced that the truck driver was informed of his right to request drug testing of the split specimen within 72 hours, misconduct for purposes of unemployment benefits as required by Miss. Code Ann. § 71-5-513A(1)(b) was not established and the Board of Review of the Mississippi Employment Security Commission's decision denying the truck driver unemployment benefits was improper. Southwood Door Co. v. Burton, 847 So. 2d 833, 2003 Miss. LEXIS 276 (Miss. 2003).

Substantial evidence supported the agency's finding that a claimant had been discharged for misconduct in referring to a supervisor in a derogatory manner, using profane language, which disqualified her for unemployment benefits. Norman v. Magnolia Reg'l Health Ctr., 848 So. 2d 213, 2003 Miss. App. LEXIS 559 (Miss. Ct. App. 2003), aff'd, 2003 Miss. App. LEXIS 624 (Miss. Ct. App. June 17, 2003).

Denial by the Board of Review of the Mississippi Employment Security Commission of unemployment benefits for employee misconduct under Miss. Code Ann. § 71-5-513A(1)(b) was supported by substantial evidence and was conclusive under Miss. Code Ann. § 71-5-531 where the employee was discharged for smoking while hazardous waste was on a forklift; the smoking incident rose to the level of misconduct under the unemployment law as the employee had been cited for four safety violations in the previous seven months, two of which had resulted in suspensions. Miss. Empl. Sec. Comm'n v. Barnes, 853 So. 2d 153, 2003 Miss. App. LEXIS 727 (Miss. Ct. App. 2003).

10. —Held not disqualification.

Police officer was entitled to unemployment benefits after the officer was terminated due to a mental disorder because the fact—alone—that the officer was diagnosed with a mental disorder that made the officer mentally unfit for duty as a police officer did not constitute misconduct on the officer's part, nor did the fact that the officer failed to obtain a second opinion to rebut the officer's mental diagnosis constitute misconduct on the officer's part. City of Grenada v. Miss. Dep't of Empl. Sec., — So. 3d —, 2021 Miss. LEXIS 165 (Miss. June 24, 2021).

Because the Mississippi Department of Employment Security's Board of Review supported its decision that a terminated employee was not disqualified from receiving unemployment benefits for misconduct with substantial evidence—the employee's testimony that the employee had not intentionally lied to supervisors, that the employee brought home company information only to protect the information and to complete work, and that the employee's personal internet use was neither unusual or concerning—the decision was neither arbitrary, nor capricious. Columbus Light & Water Dep't v. Miss. Dep't of Empl. Sec., 281 So. 3d 920, 2019 Miss. App. LEXIS 105 (Miss. Ct. App. 2019).

Award of unemployment benefits to a former county employee was appropriate, when the county contended that the employee was ineligible for unemployment benefits because of alleged misconduct, because the Mississippi Department of Employment Security Board of Review did not act arbitrarily in finding that the county failed to meet its burden of proof by clear and convincing evidence and the administrative law judge's interest in recent, rather than remote, complaints or warnings about the employee's performance was not arbitrary or capricious. Jackson Cnty. v. Miss. Dep't of Empl. Sec., 193 So. 3d 683, 2016 Miss. App. LEXIS 378 (Miss. Ct. App. 2016).

Circuit court erred in reversing an award of unemployment benefits to a female corrections officer because the employee's conduct was not willful, wanton, or equally culpable where neither the ALJ nor the Board of Review found that she had committed misconduct, she never wore a skirt to work after her supervisor told her she could not, and the employee manual expressly allowed other department employees to wear skirts and contained a nondiscrimination policy that the employee thought applied to her situation. Finnie v. Lee Cnty. Bd. of Supervisors, 186 So. 3d 831, 2016 Miss. LEXIS 105 (Miss. 2016).

Applicant was not disqualified from receiving unemployment benefits because an employer did not prove that she committed disqualifying misconduct due to low productivity; mere inefficiency did to amount to misconduct, and the employee testified that she worked to the best of her ability and that factors outside of her control contributed to her missing quotas. Also, there was no showing that the employee violated a uniformly enforced rule. Franklin Collection Serv. v. Miss. Dep't of Empl. Sec., 181 So. 3d 304, 2015 Miss. App. LEXIS 671 (Miss. Ct. App. 2015).

Circuit court erred in affirming the denial of an employee's request for unemployment benefits because the decision was not supported by substantial evidence where the employee was no more insubordinate than her coworkers, the evidence did not arise to a wilful and wanton disregard for the employer's interest, and the employee's conduct during the one incident in the record was not the equivalent of a constant or continuing intentional refusal to obey a direct or implied order. Johnson v. Miss. Dep't of Empl. Sec., 150 So. 3d 149, 2014 Miss. App. LEXIS 626 (Miss. Ct. App. 2014).

Benefits claimant was eligible for unemployment compensation after her termination from a retail store for one incident of using profanity in the presence of a customer because this did not rise to the level of disqualifying misconduct under Miss. Code Ann. § 71-5-513, even though the conduct might have justified her termination. Acy v. Miss. Empl. Sec. Comm'n, 960 So. 2d 592, 2007 Miss. App. LEXIS 469 (Miss. Ct. App. 2007).

Where the school district failed to renew claimant's contract as a physical education teacher and head basketball coach based on its dissatisfaction with the basketball program and the physical education program, the cited reasons did not amount to the requisite misconduct necessary to preclude claimant from receiving unemployment benefits under Miss. Code Ann. § 71-5-513. Greenwood Pub. Sch. Dist. v. Miss. Dep't of Empl. Sec., 962 So. 2d 684, 2007 Miss. App. LEXIS 113 (Miss. Ct. App. 2007).

Employee was not disqualified from receiving unemployment under Miss. Code Ann. § 71-5-513 based on her one act of cursing under her breath in the presence of a customer because this isolated incident, although sufficient for termination, was insufficient to show disqualifying misconduct. Acy v. Miss. Empl. Sec. Comm'n, 2007 Miss. App. LEXIS 54 (Miss. Ct. App. Feb. 6, 2007).

Where the claimant was discharged because she was experiencing difficulty working with another employee, her actions did not constitute misconduct under Miss. Code Ann. § 71-5-513A(1)(b). Thus, she was not disqualified from receiving unemployment benefits. Trading Post, Inc. v. Miss. Empl. Sec. Comm'n, 924 So. 2d 634, 2006 Miss. App. LEXIS 183 (Miss. Ct. App. 2006).

Although an employee violated an employer's policy by failing to call and give an update on his medical status on a regular basis while receiving workers' compensation benefits, he was not disqualified from receiving unemployment benefits under Miss. Code Ann. § 71-5-513(A)(1)(b) based on misconduct since the policy was not consistently applied. Miss. Empl. Sec. Comm'n v. Woods, 938 So. 2d 359, 2006 Miss. App. LEXIS 700 (Miss. Ct. App. 2006).

Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, or inadvertences and ordinary negligence in isolated incidents, and good faith errors in judgment or discretion were not considered misconduct within the meaning of Miss. Code Ann. § 71-5-513 A(1)(b), and because inability or incapacity resulting in failure of good performance was not misconduct, the employer failed to establish misconduct on the part of the unemployment compensation claimant. Time Warner Cable, Inc. v. Miss. Empl. Sec. Comm'n Bd. of Review, 922 So. 2d 820, 2006 Miss. App. LEXIS 129 (Miss. Ct. App. 2006).

In an appeal from a decision of the Mississippi Employment Security Commission (MESC), and the circuit court's affirmance thereon, the facts were: (1) the employee was warned in regard to an excessive number of sick days, early leaves and absences; (2) he received an unsatisfactory performance review because he had not been cooperative with campus security; (3) he was disruptive at a campus physical plant and he left work without permission; (3) he was placed on probation regarding his job performance; and finally, (4) he was arrested for robbery arrest and possession of a firearm by a convicted felon. In its infinite wisdom, the appellate court concluded the employee was terminated, not because of the aforementioned performance issues (unrelated to his incarceration), but because of the events which surrounded his two day incarceration; in that respect, the poor fellow did not want his employer to know about his arrest, so he had his girlfriend call his employer and state that he would be absent for two days, and without the employee's permission, the girlfriend told the employer that same was due his mother's illness; his girlfriend lied, but he did not, the appellate court concluded his employer did not need to know the reason for said two day absence, and the denial of his application for unemployment benefits was reversed. Broome v. Miss. Empl. Sec. Comm'n, 921 So. 2d 360, 2005 Miss. App. LEXIS 397 (Miss. Ct. App. 2005), rev'd, 921 So. 2d 334, 2006 Miss. LEXIS 45 (Miss. 2006).

Court erred in upholding an order denying a city employee's claim for unemployment compensation benefits after the employee was terminated because the employee's actions could not be classified as "misconduct" under Miss. Code Ann. § 71-5-513A(1)(b). Record lacked sufficient evidence to support the conclusion that the employee's failure to keep a park clean all day constituted carelessness and negligence of such degree, or recurrence thereof, as to manifest culpability. Armstrong v. Miss. Empl. Sec. Comm'n, 874 So. 2d 989, 2004 Miss. App. LEXIS 159 (Miss. Ct. App. 2004).

Term "misconduct," as used in Miss. Code Ann. § 71-5-513(A), was conduct evincing such willful and wanton disregard of the employer's interest as was found in deliberate violations or disregard of standards of behavior which the employer had the right to expect from his employee; failure in good performance as the result of inability or incapacity, or inadvertence and ordinary negligence in isolated incidents were not considered misconduct; the claimant should have been eligible for benefits. Davis v. Miss. Empl. Sec. Comm'n, 858 So. 2d 909, 2003 Miss. App. LEXIS 1037 (Miss. Ct. App. 2003).

In order to establish a federal Department of Transportation-regulated employee's ineligibility for state unemployment benefits because of a positive drug or alcohol test result pursuant to 49 U.S.C.S. § 31306, there must be clear and convincing evidence that the testing was conducted according to the federal guidelines; because no evidence was produced that the truck driver was informed of his right to request drug testing of the split specimen within 72 hours, misconduct for purposes of unemployment benefits as required by Miss. Code Ann. § 71-5-

513A(1)(b) was not established and the Board of Review of the Mississippi Employment Security Commission's decision denying the truck driver unemployment benefits was improper. Southwood Door Co. v. Burton, 847 So. 2d 833, 2003 Miss. LEXIS 276 (Miss. 2003).

Denial of unemployment compensation to a fired special education teacher was proper where she was fired for misconduct for failing to follow approved procedures and showing a continuing disregard for the policies and procedures of her employer. Yarbrough v. Miss. Empl. Sec. Comm'n, 841 So. 2d 1193, 2003 Miss. App. LEXIS 297 (Miss. Ct. App. 2003).

Administrative decision that a day care center worker who left the center without permission after an argument with her supervisor over the care of a child was properly terminated for misconduct and was, therefore, ineligible to receive unemployment compensation benefits was supported by substantial evidence that the worker was asked not to leave because the center would then be understaffed and was told that if she did leave she would be considered as having quit. Otto v. Miss. Empl. Sec. Comm'n, 839 So. 2d 547, 2002 Miss. App. LEXIS 866 (Miss. Ct. App. 2002).

Denial of unemployment benefits was upheld, as employee was terminated for insubordination when he continued to send co-employees emails after he was warned not to, and the restriction on communication was reasonably related to job performance and the job environment, even though the restriction included contact with employees both at work and away from work for non-work-related matters. Captain v. Miss. Empl. Sec. Comm'n, 817 So. 2d 634, 2002 Miss. App. LEXIS 304 (Miss. Ct. App. 2002).

Where the employee was terminated for refusing to carry out the order of his boss, and, his assertions to the contrary, the employee had no medical restrictions, the employee was terminated for misconduct and was ineligible for unemployment benefits under Miss. Code Ann. § 71-5-513A(1)(b). Reeves v. Miss. Empl. Sec. Comm'n, 806 So. 2d 1178, 2002 Miss. App. LEXIS 73 (Miss. Ct. App. 2002).

An employee's willful refusal to report for work for the purpose of participating in an unauthorized strike when the employee had actual knowledge that participation in the strike violated the provisions of the agreement under which he was employed rises to the level of disqualifying misconduct and may not be dismissed as a mere isolated incident of insubordination. Miss. Empl. Sec. Comm'n v. Berry, 811 So. 2d 298, 2001 Miss. App. LEXIS 32 (Miss. Ct. App. 2001).

A postal employee was properly discharged for misconduct and, therefore, was not entitled to benefits where (1) after he requested overtime or assistance and was refused, he disobeyed his supervisor's direct command to finish delivering the mail in the time allowed, (2) he even took time away from his duties to call the post office and complain to a clerk that he would not be able to finish delivering the mail on his route, and (3) he returned to the post office with undelivered mail instead of following the department's policy of obeying the order and submitting a grievance later. Johnson v. State Empl. Sec. Comm'n, 767 So. 2d 1088, 2000 Miss. App. LEXIS 447 (Miss. Ct. App. 2000).

A nurse at a retirement home violated several provisions of her employee handbook and, therefore, committed misconduct and was ineligible for benefits where, after being arrested for disturbing the peace, she threatened the mother of an employee at the jail to which she was taken, the mother being an invalid who was a long-term resident at the retirement home. Johnson v. Mississippi Empl. Sec. Comm'n, 761 So. 2d 861, 2000 Miss. LEXIS 132 (Miss. 2000).

A claimant was not entitled to unemployment benefits because he was discharged from employment for misconduct connected with his work where he manufactured fake identification cards intended to resemble official state identification cards issued by the Department of Public Safety and photocopies of several of the cards were discovered in the personnel files of other employees at the plant, notwithstanding that the claimant manufactured the identification cards while off-duty and testified that he did not intend the cards to be used to gain employment with his employer; in the community where the claimant lived, it was commonly understood that anyone desiring employment with his employer would be required to submit appropriate identification and that an official state identification card was one of the typical means of accomplishing that requirement. Mississippi Empl. Sec. Comm'n v. Douglas, 758 So. 2d 1059, 2000 Miss. App. LEXIS 135 (Miss. Ct. App. 2000).

There was sufficient evidence that the claimant was guilty of willful misconduct where, after receiving several official employer admonitions, he was dismissed when he removed and ate canned pineapple from the employee salad bar, allegedly because he believed it was free, and, when informed that he would have to pay for it, refused to do so. Kellar v. Mississippi Empl. Sec. Comm'n, 756 So. 2d 840, 2000 Miss. App. LEXIS 53 (Miss. Ct. App. 2000).

The uttering of vulgar obscenities by the claimant directed at her supervisor rose to the level of a disqualifying act of insubordination and misconduct where the utterings were the result of the claimant's displeasure with her supervisor's repeated orders to perform an authorized and reasonable task and the encounter even went so far as to briefly disrupt two of the employer's production lines. Mississippi Empl. Sec. Comm'n v. Hudson, 757 So. 2d 1010, 2000 Miss. App. LEXIS 30 (Miss. Ct. App. 2000).

A silk screener was properly discharged for misconduct due to her failure to properly clean the equipment after repeated reprimands; her poor performance was not due to her inability or incapacity to perform her duties as a silk screener, and her failure to clean the equipment involved in the silk screening process bore no relation to her skills as a silk screener. Shavers v. Mississippi Empl. Sec. Comm'n, 763 So. 2d 183, 2000 Miss. App. LEXIS 90 (Miss. Ct. App. 2000).

A bank teller was not discharged for misconduct and, therefore, was entitled to unemployment compensation benefits where she was fired due to a $ 2,000 shortage in her cash drawer, but the bank believed the shortage to have been caused by an honest mistake and fired her not for dishonesty, but rather for negligent actions consistent with an alleged policy of the bank that tellers would be automatically terminated following any occurrence of a teller's drawer being out of balance by more than $ 1,000. Joseph v. Mississippi Empl. Sec. Comm'n, 771 So. 2d 410, 2000 Miss. App. LEXIS 512 (Miss. Ct. App. 2000).

A jail control officer, who was responsible for monitoring activities of all jail surveillance cameras to detect any unusual activities or equipment malfunction and reporting it to the supervisor, and who failed to report another employee for covering up a monitoring camera did not commit misconduct within the meaning of this section since the monitoring rule was not fairly and consistently enforced and the control officer had not been informed that failure to detect such an incident would result in immediate termination for such first offense. Coahoma County v. Mississippi Empl. Sec. Comm'n, 761 So. 2d 846, 2000 Miss. LEXIS 106 (Miss. 2000).

A cashier was not subject to disqualification from receiving benefits due to misconduct involving cash register variances where there was no evidence and certainly no finding that the cashier was herself pocketing the missing funds and one of the three incidents involved an overage in the register. Mississippi Empl. Sec. Comm'n v. Jones, 755 So. 2d 1259, 2000 Miss. App. LEXIS 48 (Miss. Ct. App. 2000).

A maid's conduct in refusing to scrub scuff marks off a floor did not constitute misconduct where she had previously attempted to scrub scuff marks off the floors and had experienced physical complications from her efforts. Routt v. Mississippi Empl. Sec. Comm'n, 753 So. 2d 486, 1999 Miss. App. LEXIS 667 (Miss. Ct. App. 1999).

The claimant did not violate his employer's attendance policy by not calling in or reporting to work for seven consecutive workdays since he had only missed five consecutive work days at the time that he called his supervisor to report that he would not be returning to work until he found someone to stay with his ailing grandmother; he was also able to establish good cause for his five unexplained absences, as required by the terms of the labor agreement. Campbell v. Mississippi

Empl. Sec. Comm'n, 755 So. 2d 503, 1999 Miss. App. LEXIS 330 (Miss. Ct. App. 1999).

Where the employer did not clearly convey to the claimant that her request for two days off was denied and did not warn her of the consequences if she missed two days from work, the claimant's discharge was not for willful misconduct connected with the work. Trading Post, Inc. v. Nunnery, 731 So. 2d 1198, 1999 Miss. LEXIS 48 (Miss. 1999).

The circuit court did not err in sustaining the denial of unemployment compensation to the claimant on the basis of misconduct for failing to obey directives from his supervisors to avoid spending too much time in the work area of a particular married female employee; the directive was issued because of the expressed concerns of the employer with workplace violence coupled with two incidents involving the spouses of the claimant and the other employee, and the claimant failed to abide by the directives to avoid having contact with the other employee. Hux v. Mississippi Empl. Sec. Comm'n, 749 So. 2d 1225, 1999 Miss. App. LEXIS 565 (Miss. Ct. App. 1999).

An employee's act of failing to turn over her employee identification badge upon her suspension was sufficient to constitute misconduct. Young v. Mississippi Empl. Sec. Comm'n, 754 So. 2d 464, 1999 Miss. LEXIS 352 (Miss. 1999).

Evidence supported a determination that the claimant, who was a security officer/maintenance technician, was disqualified from receiving benefits on the basis of his discharge from employment for misconduct connected with his work; claimant violated company policy by remaining on the company premises after his shift ended. Mississippi Empl. Sec. Comm'n v. Sojourner, 744 So. 2d 796, 1999 Miss. App. LEXIS 245 (Miss. Ct. App. 1999).

The claimant's failure to submit to random drug testing within the three hour period prescribed by her employer's established written policy constituted misconduct as a matter of law and, therefore, she was not entitled to unemployment benefits. Halbert v. City of Columbus, 722 So. 2d 522, 1998 Miss. LEXIS 509 (Miss. 1998).

The claimant was not disqualified from receiving benefits on the basis of insubordination arising from her refusal to see a doctor in connection with her carpal tunnel syndrome where, according the testimony of both the claimant and her supervisor, there was never a question as to her willingness to see a physician. Mississippi Empl. Sec. Comm'n v. Noel, 712 So. 2d 728, 1998 Miss. App. LEXIS 161 (Miss. Ct. App. 1998).

Substantial evidence supported finding that teacher's behavior of showing "Silence of the Lambs," an R-rated movie, to students, some of whom were under 17, which resulted in teacher's termination, constituted "misconduct," and, therefore, teacher was not entitled to unemployment benefits; teacher admitted that principal had previously told him that in future, films should relate to subject matter, teacher intentionally disregarded statement, then stated at hearing that he believed film related to his subject, anatomy and physiology, yet also stated that he had not previewed movie in order to make such determination. Mississippi Employment Sec. Comm'n v. Harris, 672 So. 2d 739, 1996 Miss. LEXIS 137 (Miss. 1996).

An employee's single violation of her employer's apparent rule regarding employee compensation confidentiality by discussing her raise and bonus did not constitute disqualifying misconduct within the meaning of the unemployment compensation law. Gore v. Mississippi Employment Sec. Com., 592 So. 2d 1008, 1992 Miss. LEXIS 1 (Miss. 1992).

The conduct of the executive director of a city council on aging constituted disqualifying misconduct within the meaning of § 71-5-513(A)(1)(b) where the council had discussed with the executive director her temper, hostile relationship, and lack of rapport with the personnel of funding agencies and had stressed to her the importance of cooperation, but complaints continued to be made by those agencies regarding the executive director's performance. Westbrook v. Greenville Council on Aging, 599 So. 2d 948, 1992 Miss. LEXIS 156 (Miss. 1992).

The suspension of an employee's driver's license for failure to maintain personal automobile liability insurance constituted misconduct connected with work so as to disqualify the employee from receiving unemployment compensation benefits where a valid driver's license was required as a condition of his employment; moreover, the employee's contention that he was unaware that his driver's license had been suspended did not preclude disqualification for unemployment benefits. Richardson v. Mississippi Employment Sec. Com, 593 So. 2d 31, 1991 Miss. LEXIS 992 (Miss. 1992).

An employee's actions constituted misconduct, so as to disqualify him from receiving unemployment compensation benefits, where the employee was absent 12 times during a 60-day portion of a 90-day probation period after he had agreed that he would not miss any time during the probation period, he made threats of bodily harm to others, including three supervisors, over a several year period, and he borrowed one of his employer's vehicles without authorization and while he had a suspended license. Booth v. Mississippi Employment Sec. Com., 588 So. 2d 422, 1991 Miss. LEXIS 653 (Miss. 1991).

The actions of a child care center employee constituted misconduct which would disqualify her from receiving unemployment compensation benefits, where the employee struck a 3- or 4-year-old child behind the head with her hand on 2 occasions, this was a violation of the employer's disciplinary policy, and the employee had been previously counselled concerning striking children in the back of the head in this manner. Mississippi Employment Sec. Com. v. Flanagan, 585 So. 2d 783, 1991 Miss. LEXIS 641 (Miss. 1991).

An employee's actions amounted to misconduct under § 71-5-513A(1)(b) where he had a record of excessive absenteeism, and he failed to notify his employer about absences after being fully warned and admonished about his absenteeism. Barnett v. Mississippi Employment Sec. Com., 583 So. 2d 193, 1991 Miss. LEXIS 395 (Miss. 1991).

Possessing a gun on company property and threatening fellow employees on company property in direct conflict with company policy both constitute "misconduct" sufficient to disqualify a terminated employee from receiving unemployment benefits. Mississippi Employment Security Com. v. Lee, 580 So. 2d 1227, 1991 Miss. LEXIS 323 (Miss. 1991).

Absenteeism from work due to alcoholism and treatment for alcoholism constitutes "misconduct" sufficient to disqualify an employee from receiving unemployment compensation benefits. Mississippi Employment Sec. Com. v. Martin, 568 So. 2d 725, 1990 Miss. LEXIS 604 (Miss. 1990).

A city firefighter who pled nolo contendere to a charge of sale of cocaine was guilty of misconduct connected with his employment so as to be disqualified from receiving unemployment compensation benefits. A firefighter is in a position requiring a great deal of responsibility, and he must be able to respond to emergency situations. A firefighter cannot violate the trust of citizens, and the city had no other choice but to fire the firefighter when he failed to clear his name. Regardless of the legal aspects of a plea of nolo contendere, it creates an implication of guilt, and the firefighter's reputation was tainted. City of Corinth v. Cox, 565 So. 2d 1142, 1990 Miss. LEXIS 471 (Miss. 1990).

An environmental technician who worked in the water treatment section of the power area of a plant was guilty of misconduct so as to be disqualified from receiving unemployment benefits where he was dismissed for sleeping on several occasions while on the job. Ray v. Bivens, 562 So. 2d 119, 1990 Miss. LEXIS 271 (Miss. 1990).

A police department employee was guilty of misconduct so as to be disqualified from receiving unemployment benefits where she received over $700 worth of personal collect telephone calls at the police station in violation of a clearly announced and published directive or policy concerning the use of the telephone by employees. Picayune v. Mississippi Employment Sec. Com., 525 So. 2d 1330, 1988 Miss. LEXIS 293 (Miss. 1988).

An unemployment compensation claimant was not entitled to benefits since excessive garnishments upon his wages constituted "misconduct" connected with his work under § 71-5-513(A)(2), in accordance with the public policy stated in § 71-5-3, the implementation of which is accomplished through contributions of all covered employers into the state employment fund pursuant to §§ Mississippi Employment Sec. Com. v. Borden, Inc., 451 So. 2d 222, 1984 Miss. LEXIS 1787 (Miss. 1984).

An employee who was terminated for excessive absenteeism was not disqualified from receiving unemployment compensation benefits due to misconduct, where the employee was a good employee for 13 years, it was only after her work schedule changed that she began to have problems arising from child care and transportation difficulties, and her supervisor thwarted her attempts to alleviate her problems by refusing to change her lunch schedule to enable her to pick up her children from school. Mississippi Employment Sec. Com. v. Bell, 584 So. 2d 1270, 1991 Miss. LEXIS 501 (Miss. 1991).

An employer failed to meet his burden of proving disqualifying misconduct, arising from a fight between 2 employees, by substantial, clear and convincing evidence, where the only eyewitness who testified at the hearing was the employee, and the employer offered a report prepared by a security officer, an unsigned summary of witness testimony without any proof of who prepared it, 3 handwritten statements of witnesses, and a list of safety rules which included a prohibition of fighting or provoking a fight, since uncorroborated hearsay testimony is insufficient to rise to the required level of substantial evidence. Mississippi Employment Sec. Com. v. McLane-Southern, Inc., 583 So. 2d 626, 1991 Miss. LEXIS 435 (Miss. 1991).

The fact that an employee has been involved in an isolated fight with a fellow employee at the workplace, standing alone, is not "misconduct" within the meaning of § 71-5-513(A)(1)(b) so as to disqualify that person from receiving unemployment benefits should that person be discharged as a result of the fight. Mississippi Employment Sec. Com. v. McLane-Southern, Inc., 583 So. 2d 626, 1991 Miss. LEXIS 435 (Miss. 1991).

"Misconduct" imports conduct that reasonable and fair-minded external observers would consider a wanton disregard of the employer's legitimate interests. Something more than mere negligence must be shown, though repeated neglect of an employer's interests may rise to the dignity of misconduct. An employee's refusal to expose himself or herself to unreasonable danger or risk of harm does not constitute misconduct. An employee does not surrender his or her right to regard his or her personal safety when he or she accepts employment. A worker undertaking a hazardous duty has a right to emerge from the employment a whole person, the same as a pencil pusher with an office job. An employer has no countervailing interest that the law ought to respect. An employee has the right to walk off the job without his or her conduct being regarded "misconduct" if a reasonably prudent person under the circumstances would believe that the danger was so grave that there existed a real danger of death or serious physical injury, and if the employee had no reasonable alternative. Where there exists such facts and circumstances, known to or reasonably available to the employer, the employee's refusal of the assignment without more is not "misconduct" under § 71-5-513(A)(1)(b). Thus, an employee of a company specializing in servicing oil well problems was not guilty of misconduct within the meaning of the Mississippi Employment Security Act by refusing an assignment to correct a potential blowout on an oil drilling rig where the job involved substantial danger to life and limb and the employer gave the employee no option but to do what he reasonably considered extremely dangerous, even though the employee may have been negligent in refusing the job before inspecting the site. Mississippi Employment Sec. Com. v. Phillips, 562 So. 2d 115, 1990 Miss. LEXIS 270 (Miss. 1990).

In an action by an employee seeking unemployment compensation benefits following her termination as a cashier from a supermarket, the employee was not guilty of misconduct, so as to be disqualified from receiving benefits, where she had refused to take a polygraph test conducted by an independent firm hired by her employer to question a number of its employees regarding suspected misconduct, she had signed an agreement to make restitution for certain items which she had allegedly consumed from the delicatessen in the market without paying for them, and where this consumption of small quantities of food without payment was neither willful nor intentional, notwithstanding that an employee's deliberate embezzlement of funds entrusted to her care in the course of her employment would constitute misconduct. Piggly Wiggly of Bay Springs v. Mississippi Employment Sec. Com., 465 So. 2d 1062, 1985 Miss. LEXIS 1976 (Miss. 1985).

Cashier who consumes small quantities of food without payment has not committed misconduct which will disqualify her from eligibility for unemployment compensation benefits upon discharge where failure to pay is neither willful nor intentional. Piggly Wiggly of Bay Springs v. Mississippi Employment Sec. Com., 465 So. 2d 1062, 1985 Miss. LEXIS 1976 (Miss. 1985).

11. Late notice of appeal.

Denial of unemployment benefits to the employee under Miss. Code Ann. § 71-5-513(A)(1)(b) was appropriate because he failed to timely seek review of the denial of his claim for unemployment benefits. The employee failed to show good cause for the late notice of appeal because he did not provide any evidence that his failure to receive notice of the claims examiner's decision was due to an act beyond his control. Cerrato v. Miss. Empl. Sec. Comm'n, 968 So. 2d 957, 2007 Miss. App. LEXIS 736 (Miss. Ct. App. 2007).

RESEARCH REFERENCES

ALR.

Leaving employment, or unavailability for particular job or duties because of sickness or disability, as affecting right to unemployment compensation. 14 A.L.R.2d 1308.

Unemployment compensation of claimant who refuses nonunion employment. 56 A.L.R.2d 1015.

Unemployment compensation: Eligibility as affected by claimant's refusal to work at particular times or on particular shifts. 35 A.L.R.3d 1129.

Unemployment compensation: eligibility of employee laid off according to employer's mandatory retirement plan. 50 A.L.R.3d 880.

Termination of employment because of pregnancy as affecting right to unemployment compensation. 51 A.L.R.3d 254.

Right to unemployment compensation as affected by receipt of pension. 56 A.L.R.3d 520.

Right to unemployment compensation as affected by receipt of Social Security benefits. 56 A.L.R.3d 552.

Discharge for absenteeism or tardiness as affecting right to unemployment compensation. 58 A.L.R.3d 674.

Construction of phrase "establishment" or "factory, establishment, or other premises" within unemployment compensation statute rendering employee ineligible during labor dispute or strike at such location. 60 A.L.R.3d 11.

Construction of phrase "stoppage of work" in statutory provision denying unemployment compensation benefits during stoppage resulting from labor dispute. 61 A.L.R.3d 693.

Unemployment compensation: eligibility of participants in sympathy strike or slowdown. 61 A.L.R.3d 746.

Unemployment compensation: labor dispute disqualification as applicable to striking employee who is laid off subsequent employment during strike period. 61 A.L.R.3d 766.

What constitutes participation or direct interest in, or financing of, labor dispute or strike within disqualification provisions of unemployment compensation acts. 62 A.L.R.3d 314.

Refusal of nonstriking employee to cross picket line as justifying denial of unemployment compensation benefits. 62 A.L.R.3d 380.

Unemployment compensation: application of labor dispute disqualification for benefits to locked out employee. 62 A.L.R.3d 437.

General principles pertaining to statutory disqualification for unemployment compensation benefits because of strike or labor dispute. 63 A.L.R.3d 88.

Unemployment compensation: harassment or other mistreatment by employer or supervisor as "good cause" justifying abandonment of employment. 76 A.L.R.3d 1089.

Repayment of unemployment compensation benefits erroneously paid. 90 A.L.R.3d 987.

Use of vulgar or profane language as bar to claim for unemployment compensation. 92 A.L.R.3d 106.

Unemployment compensation: eligibility as affected by claimant's refusal to accept employment at compensation less than that of previous job. 94 A.L.R.3d 63.

Unemployment compensation: eligibility as affected by claimant's refusal to work at reduced compensation. 95 A.L.R.3d 449.

Right to unemployment compensation as affected by claimant's receipt of holiday pay. 3 A.L.R.4th 557.

Leaving or refusing employment for religious reasons as barring unemployment compensation. 12 A.L.R.4th 611.

Leaving or refusing employment because of allergic reaction as affecting right to unemployment compensation. 12 A.L.R.4th 629.

Unemployment compensation as affected by vacation or payment in lieu thereof. 14 A.L.R.4th 1175.

Right to unemployment compensation as affected by employee's refusal to work in areas where smoking is permitted. 14 A.L.R.4th 1234.

Right to unemployment compensation of one who quit job because not given enough work to keep busy. 15 A.L.R.4th 256.

Employee's act or threat of physical violence as bar to unemployment compensation. 20 A.L.R.4th 637.

Eligibility for unemployment compensation as affected by voluntary resignation because of change of location of residence. 21 A.L.R.4th 317.

Right to unemployment compensation as affected by misrepresentation in original employment application. 23 A.L.R.4th 1272.

Conduct or activities of employees during off-duty hours as misconduct barring unemployment compensation benefits. 35 A.L.R.4th 691.

Eligibility for unemployment compensation benefits of employee who attempts to withdraw resignation before leaving employment. 36 A.L.R.4th 395.

Unemployment Compensation: burden of proof as to voluntariness of separation. 73 A.L.R.4th 1093.

Employee's use of drugs or narcotics, or related problems, as affecting eligibility for unemployment compensation. 78 A.L.R.4th 180.

Eligibility for unemployment compensation of employee who left employment based on belief that involuntary discharge was imminent. 79 A.L.R.4th 528.

Unemployment compensation: eligibility where claimant leaves employment under circumstances interpreted as a firing by the claimant but as a voluntary quit by the employer. 80 A.L.R.4th 7.

Unemployment compensation: Eligibility as affected by claimant's refusal to work at particular times or on particular shifts for domestic or family reasons. 2 A.L.R.5th 475.

Unemployment compensation: Leaving employment to become self-employed or to go into business for oneself as affecting right to unemployment compensation. 45 A.L.R.5th 715.

Unemployment compensation: Leaving employment in pursuit of other employment as affecting right to unemployment compensation. 46 A.L.R.5th 659.

Unemployment compensation: Leaving employment in pursuit of education or to attend training as affecting right to unemployment compensation. 47 A.L.R.5th 775.

Leaving employment or unavailability for particular job or duties because of sickness or disability, as affecting right to unemployment compensation. 68 A.L.R.5th 13.

Eligibility for unemployment compensation of employee who retires voluntarily. 75 A.L.R.5th 339.

Work-related inefficiency, incompetence, or negligence as "misconduct" barring unemployment compensation. 95 A.L.R.5th 329.

Unemployment compensation: Harassment or other mistreatment by coworker as "good cause" justifying abandonment of employment. 121 A.L.R.5th 467.

Use of employer's e-mail or internet system as misconduct precluding unemployment compensation.

Conduct or Activities of Employees During Off-Duty Hours as Misconduct Barring Unemployment Compensation Benefits. 18 A.L.R. 6th 195.

Eligibility for Unemployment Compensation as Affected by Voluntary Resignation Because of Change of Location of Residence Under Statute Conditioning Benefits upon Leaving for "Good Cause," "Just Cause," or Cause of "Necessitous and Compelling Nature." 25 A.L.R. 6th 101.

Eligibility for Compensation as Affected by Voluntary Resignation Because of Change of Location of Residence Under Statute Conditioning Benefits upon Leaving for "Good Cause Attributable to the Employer". 25 A.L.R. 6th 111.

Eligibility for Unemployment Compensation as Affected by Voluntary Resignation Because of Change of Location of Residence Under Statute Denying Benefits to Certain Claimants Based on Particular Disqualifying Motive for Move or Unavailability for. 27 A.L.R. 6th 123.

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation §§ 29 et seq., 48 et seq., 52 et seq., 59 et seq., 76 et seq., 211.

24 Am. Jur. Pl & Pr Forms (Rev), Unemployment Compensation, Forms 1 et seq.; 11 et seq.; 31 et seq.; 51 et seq.

1 Am. Jur. Proof of Facts 2d 613, Suitability of Work – Unemployment Compensation.

9 Am. Jur. Proof of Facts 2d 697, Unemployment Compensation: Employer's Harassment or Other Mistreatment Justifying Employee's Abandonment of Employment.

36 Am. Jur. Proof of Facts 2d 701, Religiously Grounded Refusal to Work Certain Shifts as Affecting Unemployment Compensation Eligibility.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 380 et seq., 479.

Law Reviews.

Constitutional law – first amendment – free exercise clause – expression of cultural and religious heritage is not grounds for denial of unemployment compensation. 61 Miss. L. J. 223, Spring, 1991.

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Practice References.

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§ 71-5-515. Filing.

Claims for benefits shall be made in accordance with such regulations as the commission may prescribe. Each employer shall post and maintain in places readily accessible to individuals in his service printed statements concerning such regulations or such other matters as the commission may by regulation prescribe. Each employer shall supply such individuals copies of such printed statements or materials relating to claims for benefits as the commission may by regulation prescribe. Such printed statements or materials shall be supplied by the commission to each employer without cost to him.

HISTORY: Codes, 1942, § 7380; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4a; Laws, 1964, ch. 442, § 1a.

Editor's Notes — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Definitions of terms relative to claims, see §§ 71-5-11,

71-5-355.
Conditions of eligibility for benefits, see § 71-5-511.

JUDICIAL DECISIONS

1. In general.

Compliance with the statute or rules requiring an unemployment claimant to register for work and file a claim for benefits at the public unemployment office, and to continue to report at stated intervals during the waiting period, could not be waived by a mere receptionist in the waiting room of the employment office, and the claimant did not bring himself within either the terms of the statute or the rules and regulations prescribed thereunder, so as to be entitled to the compensation allowed, by showing that he presented his social security card to one of the ladies in the front office of the local unemployment compensation commission and that she informed him he would have to get his compensation benefits from the State of Tennessee, his employer being a Tennessee corporation and his employment being in that state. Unemployment Compensation Com. v. Barlow, 191 Miss. 156, 1 So. 2d 241, 2 So. 2d 544, 1941 Miss. LEXIS 111 (Miss. 1941).

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation §§ 31, 88.

17C Am. Jur. Legal Forms 2d, Unemployment Compensation §§ 252:2 et seq.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 475 et seq.

§ 71-5-516. Disclosure of child support obligations on claim for benefits; deduction and withholding from benefit.

(1) An individual filing a new claim for benefits shall, at the time of filing such claim, disclose whether or not the individual owes child support obligations as defined under subsection (7). If any such individual discloses that he owes child support obligations, and is determined to be eligible for benefits, the commission shall notify the child support enforcement agency that the individual has been determined to be eligible for benefits.

(2) The commission shall deduct and withhold from any benefits payable to an individual that owes child support obligations as defined under subsection (7):

(a) The amount specified by the individual to the commission to be deducted and withheld under this subsection, if neither (b) nor (c) is applicable; or

(b) The amount (if any) determined pursuant to an agreement submitted to the commission under Section 454(19)(A)and(B)(i) of the Social Security Act by the child support enforcement agency, unless (c) is applicable; or

(c) Any amount otherwise required to be so deducted and withheld from such benefits pursuant to legal process (as that term is defined in Section 462(e) of the Social Security Act) properly served upon the commission. Transmittal of the information in subsection (b) or (c) by automated means shall constitute proper service of legal process upon the commission.

(3) Any amount deducted and withheld under subsection (2) shall be paid by the commission to the child support enforcement agency.

(4) Any amount deducted and withheld under subsection (2) shall for all purposes be treated as if it were paid to the individual as benefits and paid by such individual to the child support enforcement agency in satisfaction of the individual's child support obligations.

(5) For purposes of subsections (1) through (4), the term "benefits" means any compensation payable under this chapter (including amounts payable by the commission pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment).

(6) This section applies only if appropriate arrangements have been made for reimbursement by the child support enforcement agency for the administrative costs incurred by the commission under this section which are attributable to child support obligations being enforced by the child support enforcement agency. No administrative costs of either the commission or the child support enforcement agency shall be deducted or withheld by the commission from any benefits payable, however. The amount to be deducted and withheld shall be in an even dollar amount, and the agency shall distribute the support collection in the manner prescribed by Title IV-D of the Social Security Act.

(7) The term "child support obligations" is defined for purposes of this section as including only obligations which are being enforced pursuant to a plan described in Section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act.

HISTORY: Laws, 1982, ch. 480, § 4; Laws, 1986, ch. 332; Laws, 1991, ch. 406, § 1; Laws, 1993, ch. 346, § 1, eff from and after July 1, 1993.

Editor's Notes — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Assignment of benefits and exemptions, see § 71-5-539.

Federal Aspects— Title IV D of Social Security Act, see 42 USCS §§ 651 et seq.

Sections 454 and 462 of the Social Security Act are classified at 42 USCS §§ 654 and 662.

RESEARCH REFERENCES

ALR.

Unemployment compensation: termination of employment, known to be for a specific, limited duration, upon expiration of period, as voluntary. 30 A.L.R.4th 1201.

§ 71-5-517. Initial determination [Repealed effective July 1, 2023].

Upon the taking of a claim by the department, an initial determination thereon shall be made promptly and shall include a determination with respect to whether or not benefits are payable, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration of benefits. In any case in which the payment or denial of benefits will be determined by the provisions of subsection A(4) of Section 71-5-513, the examiner shall promptly transmit all the evidence with respect to that subsection to the department, which, on the basis of evidence so submitted and such additional evidence as it may require, shall make an initial determination with respect thereto. An initial determination may for good cause be reconsidered. The claimant, his most recent employing unit and all employers whose experience-rating record would be charged with benefits pursuant to such determination shall be promptly notified of such initial determination or any amended initial determination and the reason therefor. Benefits shall be denied or, if the claimant is otherwise eligible, promptly paid in accordance with the initial determination or amended initial determination. The jurisdiction of the department over benefit claims which have not been appealed shall be continuous. The claimant or any party to the initial determination or amended initial determination may file an appeal from such initial determination or amended initial determination within fourteen (14) days after notification thereof, or after the date such notification was sent to his last known address.

Notwithstanding any other provision of this section, benefits shall be paid promptly in accordance with a determination or redetermination, or the decision of an appeal tribunal, the Board of Review or a reviewing court upon the issuance of such determination, redetermination or decision in favor of the claimant (regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review, as the case may be, or the pendency of any such application, filing or petition), unless and until such determination, redetermination or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied in accordance with such modifying or reversing redetermination or decision. Any benefits finally determined to have been erroneously paid may be set up as an overpayment to the claimant and must be liquidated before any future benefits can be paid to the claimant. If, subsequent to such initial determination or amended initial determination, benefits with respect to any week for which a claim has been filed are denied for reasons other than matters included in the initial determination or amended initial determination, the claimant shall be promptly notified of the denial and the reason therefor and may appeal therefrom in accordance with the procedure herein described for appeals from initial determination or amended initial determination.

HISTORY: Codes, 1942, § 7381; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4b; Laws, 1964, ch. 442, § 1b; Laws, 1972, ch. 375, § 1; Laws, 1977, ch. 352; Laws, 1986, ch. 316, § 3; Laws, 2004, ch. 572, § 40; Laws, 2007, ch. 606, § 15; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 40; reenacted without change, Laws, 2010, ch. 559, § 40; reenacted without change, Laws, 2011, ch. 471, § 41; reenacted without change, Laws, 2012, ch. 515, § 41, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451 ,§ 40, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex

Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Employer's application for review and redetermination of contribution rate, see § 71-5-355.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Late notice of appeal.
3. —Failure to show good cause.

1. In general.

In an unemployment compensation case in which an employer's appeal to an administrative law judge was untimely under filed 38-000-006 Miss. Code R. § 200.01 and Miss. Code Ann. § 71-5-517 and the worker raised the timeliness issue for the first time in her appellate brief to the Mississippi Supreme Court, her claim was procedurally barred. Brown v. Miss. Dep't of Empl. Sec., 29 So. 3d 766, 2010 Miss. LEXIS 131 (Miss. 2010).

Mississippi Department of Employment Security was not entitled to use collection actions to recover unemployment benefits paid where there was no nondisclosure or fraud in the case of an employee who was later disqualified for misconduct; even if voluntary repayment was allowed, the language of the notice to the employee did not suggest that it was voluntary in nature. Acy v. Miss. Empl. Sec. Comm'n, 2007 Miss. App. LEXIS 54 (Miss. Ct. App. Feb. 6, 2007).

Refusal to extend a 14-day deadline imposed on a motion for reconsideration was error because an employment commission had the discretion to accept new evidence and make appropriate adjustments to a prior decision awarding unemployment benefits where an employee had subsequently confessed to a crime; the deadline was not under Miss. Code Ann. § 71-5-517, but was stated in a letter to the employer. Herring Gas Co. v. Miss. Empl. Sec. Comm'n, 944 So. 2d 943, 2006 Miss. App. LEXIS 913 (Miss. Ct. App. 2006).

Decision of the circuit court that dismissed the employer's appeal because the employer did not file a timely administrative appeal as required by Miss. Code Ann. § 71-5-517 was affirmed; it was undisputed that the employer failed to file his administrative appeal within 14 days and there was no good cause for the delay. Herring Gas Co. v. Miss. Empl. Sec. Comm'n, 2006 Miss. App. LEXIS 530 (Miss. Ct. App. July 18, 2006), sub. op., 944 So. 2d 943, 2006 Miss. App. LEXIS 913 (Miss. Ct. App. 2006).

A hearing officer of the Mississippi Employment Security Commission does not conduct a trial de novo. Instead, the hearing officer is to receive all the evidence accumulated by the examiner, and then on the basis of evidence so submitted and such additional evidence as it may acquire, render an appellate decision. It is of no legal consequence that a party does not appear at a hearing. Estate of Dulaney v. Miss. Empl. Sec. Comm'n, 805 So. 2d 643, 2002 Miss. App. LEXIS 50 (Miss. Ct. App. 2002).

Once unemployment benefits commission received documents filed by the employee's former employer stating that the employee had voluntarily quit his job, the commission had good cause to reconsider its initial determination awarding benefits, even though the documents were untimely filed. Caraway v. Miss. Empl. Sec. Comm'n, 826 So. 2d 100, 2002 Miss. App. LEXIS 483 (Miss. Ct. App. 2002).

When there was no appeal from an initial determination, it was logical to assume that the Commission's jurisdiction over that determination did not continue indefinitely. Maxwell v. Miss. Empl. Sec. Comm'n, 792 So. 2d 1031, 2001 Miss. App. LEXIS 332 (Miss. Ct. App. 2001).

Unemployment benefits paid to company employees during a strike could not be recouped by the Mississippi Employment Security Commission as a result of a monetary settlement of unfair labor practice charges before the National Labor Relations Board, since §§ 71-5-19(4) and 71-5-517 provided no basis, implicit or explicit, for recoupment of the benefits where there was no evidence of wrongdoing or misrepresentation by the employees. Jones v. Mississippi Employment Sec. Comm'n, 648 So. 2d 1138, 1995 Miss. LEXIS 14 (Miss. 1995).

The Mississippi Employment Security Commission may not extend the statutory time limits for appeals absent a showing of some event not caused by a party which affected that party's substantial rights; thus, the Commission's practice of allowing an extra 3 days for delivery of the mail to be added to the 14-day time for appeal prescribed by § 71-5-517 exceeded its statutory authority. Wilkerson v. Mississippi Employment Sec. Comm'n, 630 So. 2d 1000, 1994 Miss. LEXIS 30 (Miss. 1994).

Under § 71-5-517, a party to the initial determination – claimant or employer – has 14 days from the time that the notification is mailed to appeal to the Board of Review; only if the notification is by means other than mail to the party's last known address will the time begin to run upon notification of the claim. Wilkerson v. Mississippi Employment Sec. Comm'n, 630 So. 2d 1000, 1994 Miss. LEXIS 30 (Miss. 1994).

Inasmuch as a notification of disqualification was inadvertently mailed to claimant's former address, even though he had previously notified the Employment Security Commission of his new address, the fourteen day time frame within which he had the right to appeal the decision did not begin to run from the date of mailing, but rather from the date on which the claimant actually received notification. Cane v. Mississippi Employment Sec. Com., 368 So. 2d 1263, 1979 Miss. LEXIS 2251 (Miss. 1979).

2. Late notice of appeal.

Former employer waived the issue of the untimeliness of a claimant's appeal from the initial determination because the employer did not raise the issue at the hearing before the administrative law judge, or in its appeal to the board of review, but, instead, the issue was first raised on appeal before the circuit court. Moreover, the administrative law judge's determination that the appeal was to be heard on the merits was not an abuse of discretion. Woodland Vill. Nursing Ctr., LLC v. Miss. Dep't of Empl. Sec., 138 So. 3d 946, 2013 Miss. App. LEXIS 724 (Miss. Ct. App. 2013), cert. denied, 139 So. 3d 74, 2014 Miss. LEXIS 252 (Miss. 2014).

3. —Failure to show good cause.

Employee was not entitled to unemployment benefits because her appeal was not timely filed, and the record did not present any set of facts that would support a showing of good cause to excuse her untimely filing where, when asked why she did not file the appeal in a timely manner, the employee simply stated that she had other things going on and that she thought her claim would be denied anyway. Jackson v. Miss. Dep't of Empl. Sec., 121 So. 3d 298, 2013 Miss. App. LEXIS 567 (Miss. Ct. App. 2013).

Where claimant was awarded benefits by a Mississippi Department of Employment Security claims examiner, the employer filed an untimely appeal of the decision of the Mississippi Department of Employment Security outside the fourteen-day period set forth in Miss. Code Ann. § 71-5-517; the circuit court could only decide the case in its favor if the employer could show good cause for its untimely appeal. The employer failed to provide sufficient evidence to overcome the presumption that the letter mailed by the MDES was timely delivered; therefore, the circuit court erred by reversing the decision awarding benefits. Miss. Dep't of Empl. Sec. v. Good Samaritan Pers. Servs., 996 So. 2d 809, 2008 Miss. App. LEXIS 704 (Miss. Ct. App. 2008).

Where the notice of an appeal hearing on the denial of a claimant's request for unemployment benefits was sent to her address on file as required by Miss. Code Ann. § 71-5-517, the administrative law judge did not err in concluding that the claimant had abandoned her appeal based upon her failure to appear and in denying the appeal. Tillmon v. Miss. Dep't of Empl. Sec., 996 So. 2d 825, 2008 Miss. App. LEXIS 781 (Miss. Ct. App. 2008).

Denial of unemployment benefits to the employee was appropriate because he failed to timely seek review of the denial of his claim for unemployment benefits. The employee failed to show good cause for the late notice of appeal because he did not provide any evidence that his failure to receive notice of the claims examiner's decision was due to an act beyond his control. Cerrato v. Miss. Empl. Sec. Comm'n, 968 So. 2d 957, 2007 Miss. App. LEXIS 736 (Miss. Ct. App. 2007).

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation § 88.

17C Am. Jur. Legal Forms 2d, Unemployment Compensation §§ 252:2 et seq.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 475, 490-492, 508.

§ 71-5-519. Appeals [Repealed effective July 1, 2023].

Unless such appeal is withdrawn, an appeal tribunal appointed by the executive director, after affording the parties reasonable opportunity for fair hearing, shall affirm, modify or reverse the findings of fact and initial determination or amended initial determination. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the executive director unless, within fourteen (14) days after the date of notification of such decision, further appeal is initiated pursuant to Section 71-5-523.

HISTORY: Codes, 1942, § 7382; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4c; Laws, 1964, ch. 442, § 1c; Laws, 1977, ch. 448; Laws, 2004, ch. 572, § 41; Laws, 2007, ch. 606, § 16; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 41; reenacted without change, Laws, 2010, ch. 559, § 41; reenacted without change, Laws, 2011, ch. 471, § 42; reenacted without change, Laws, 2012, ch. 515, § 42, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 41, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Review of employer's rate of contributions, see § 71-5-355.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Delivery.

1. In general.

It was error to reverse a decision of the Mississippi Department of Economic Security Board of Review dismissing a claimant's appeal from the decision of an administrative law judge because (1) the appeal was filed after the statutory deadline, and (2) the claimant showed no good cause for the delay. Miss. Dep't of Empl. Sec. v. Matthews, 203 So. 3d 46, 2016 Miss. App. LEXIS 684 (Miss. Ct. App. 2016).

Because the Mississippi Employment Security Commission (MESC) was not a circuit, chancery or county court, the Mississippi Rules of Civil Procedure, and specifically Miss. R. Civ. P. 6, were not applicable to its administrative hearings or appeals. Miss. Empl. Sec. Comm'n v. Parker, 903 So. 2d 42, 2005 Miss. LEXIS 58 (Miss. 2005).

Employee timely filed her appeal to the Mississippi Employment Security Commission's (MESC) office on June 4, 2002, and the appeals referee held a hearing on June 26, 2002. The appeals referee mailed the decision affirming the claim examiner's decision to the employee on July 1, 2002, and the employee filed her notice of appeal to the MESC Board of Review on July 16, 2002; thus, the Mississippi Supreme Court, strictly construing the 14-day time period of Miss. Code Ann. § 71-5-519, held her appeal was untimely. Miss. Empl. Sec. Comm'n v. Parker, 903 So. 2d 42, 2005 Miss. LEXIS 58 (Miss. 2005).

Pursuant to Miss. R. Civ. P. 6(a) and 6(e), the claimant's time to appeal her case to the Mississippi Employment Security Commission Board of Review began on July 2, 2002, the day after the appeals referee mailed her decision to the claimant, and ended July 19, 2002, which reflected the addition of an additional three days for the claimant to respond, as required by Rule 6(e); therefore, the claimant's appeal was filed timely with the Board of Review. Miss. Empl. Sec. Comm'n v. Parker, 905 So. 2d 613, 2004 Miss. App. LEXIS 303 (Miss. Ct. App. 2004).

Decision of the Appeals Referee became final and binding on the Board of Review as of December 28, 2001; the deadline for the employer to file an appeal was December 28, 2001, and the Board of Review did not receive the employer's appeal until December 31, 2001, three days after the statutory period expired. Miss. Empl. Sec. Comm'n v. Marion County Sheriff's Dep't, 865 So. 2d 1153, 2004 Miss. LEXIS 183 (Miss. 2004).

Original circuit court's reverse and remand was not concerned with the merits of the truck driver's claim for unemployment benefits, but, rather, it was reversed on a procedural issue, namely, the timeliness of an appeal and remanded for a decision on the merits, and there was not a circuit court determination that the record was insufficient to decide whether the employer had produced enough evidence to support the discharge of its employee; thus, the Board of Review of the Mississippi Employment Security Commission's decision to bar review of the truck driver's appeal on timeliness grounds was indicative of the finality of the agency's decision, and the circuit court held that it was error to do so and therefore, the circuit court's reverse and remand on the issue of timeliness was not interlocutory in nature, and the employer should have appealed that decision. Southwood Door Co. v. Burton, 847 So. 2d 833, 2003 Miss. LEXIS 276 (Miss. 2003).

An appeal by the employer city in an unemployment compensation case was untimely where it was not filed within 14 days of the referee's decision, notwithstanding the assertion that notice of the decision was sent to the wrong address; the address to which the notice was sent was used by the city on numerous documents throughout the proceedings. City of Tupelo v. Mississippi Empl. Sec. Comm'n, 748 So. 2d 151, 1999 Miss. LEXIS 315 (Miss. 1999).

Notice of an employer's appeal of a referee's decision was sufficient to satisfy the claimant's minimum due process rights, where the Board of Review mailed a notice to the claimant but did not notify the claimant's attorney of the appeal. Notifying the claimant only and not the attorney satisfies minimum due process requirements so long as such notice is "reasonably calculated" to apprise the claimant of necessary information. Booth v. Mississippi Employment Sec. Com., 588 So. 2d 422, 1991 Miss. LEXIS 653 (Miss. 1991).

Where the Board of Review had remanded a cause to the referee for the taking of additional testimony but, without such testimony having been taken, the Board reversed the referee's original decision, it was error for the Board to reconsider and render its decision without first having given notice to the employee. Williams v. Mississippi Employment Sec. Com., 395 So. 2d 964, 1981 Miss. LEXIS 1965 (Miss. 1981).

2. Delivery.

Record established that an applicant's appeal of the denial of benefits was untimely where the appeal was stamped as received four days after the deadline, and the applicant's assertion that the Mississippi Department of Employment Security's records were unreliable was wholly unsupported by the record. Onyia v. Miss. Empl. Sec. Comm'n, 98 So. 3d 1136, 2012 Miss. App. LEXIS 617 (Miss. Ct. App. 2012).

The statute demands more than the act of mailing; it also requires the result of delivery. Holt v. Mississippi Empl. Sec. Comm'n, 724 So. 2d 466, 1998 Miss. App. LEXIS 1065 (Miss. Ct. App. 1998).

The defendant commission is required to consider evidence offered by the claimant and to determine whether it overcomes the presumption of delivery of mail; however, where the only evidence presented is a denial of receipt, the presumption is not overcome. Holt v. Mississippi Empl. Sec. Comm'n, 724 So. 2d 466, 1998 Miss. App. LEXIS 1065 (Miss. Ct. App. 1998).

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation § 88.

17C Am. Jur. Legal Forms 2d, Unemployment Compensation §§ 252:2 et seq.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 484-489.

§ 71-5-521. Appeal tribunals.

To hear and decide appealed claims, the board of review shall appoint one or more impartial appeal tribunals consisting in each case of either a referee, who shall be selected in accordance with Section 71-5-121, or a body consisting of three (3) members, one (1) of whom shall be a referee, who shall serve as chairman, one (1) of whom shall be a representative of employers, and the other of whom shall serve as a representative of employees. Each of the latter two (2) members shall serve at the pleasure of the board of review and be paid a fee of not more than Twenty Dollars ($20.00) per day for active service on such tribunals, plus necessary expenses. Referees shall be paid such salary or per diem as may be determined by the commission, and such expenses as may be allowed by the commission. No person shall participate on behalf of the commission or the board of review in any case in which he is an interested party. The board of review may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

HISTORY: Codes, 1942, § 7383; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4d; Laws, 1964, ch. 442, § 1d.

Editor's Notes — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Review of employer's rate of contributions or contribution liability, see § 71-5-355.

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation, § 88.

17C Am. Jur. Legal Forms 2d, Unemployment Compensation §§ 252:2 et seq.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 490-492, 508.

§ 71-5-523. Board of review [Repealed effective July 1, 2023].

The Board of Review may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The Board of Review shall permit such further appeal by any of the parties to a decision of an appeal tribunal which is not unanimous, and by the examiner whose decision has been overruled or modified by an appeal tribunal. The Board of Review may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceedings so removed to the Board of Review shall be heard by a quorum thereof in accordance with the requirements of Section 71-5-519 and within fifteen (15) days after notice of appeal has been received by the executive director. No notice of appeal shall be deemed to be received by the executive director, within the meaning of this section, until all prior appeals pending before the Board of Review have been heard. The Board of Review shall, within four (4) days after its decision, so notify the parties to any proceeding of its findings and decision.

HISTORY: Codes, 1942, § 7384; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4e; Laws, 1964, ch. 442, § 1e; Laws, 2004, ch. 572, § 42; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 42; reenacted without change, Laws, 2010, ch. 559, § 42; reenacted without change, Laws, 2011, ch. 471, § 43; reenacted without change, Laws, 2012, ch. 515, § 43, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 42, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Commission's review of employer's rate of contributions or contribution liability, see § 71-5-355.

JUDICIAL DECISIONS

1. In general.

Where the Board of Review had remanded a cause to the referee for the taking of additional testimony but, without such testimony having been taken, the Board reversed the referee's original decision, it was error for the Board to reconsider and render its decision without first having given notice to the employee. Williams v. Mississippi Employment Sec. Com., 395 So. 2d 964, 1981 Miss. LEXIS 1965 (Miss. 1981).

An order of the board of review of the employment security commission as to facts, if supported by evidence and in the absence of fraud, is conclusive upon the trial court on review. Mississippi Employment Sec. Com. v. Fortenberry, 193 So. 2d 142, 1966 Miss. LEXIS 1282 (Miss. 1966).

Board of review may consider appeal, at request of claimant, on the basis of the evidence submitted to the referee. Mississippi Employment Sec. Com. v. Wilks, 247 Miss. 737, 156 So. 2d 583, 1963 Miss. LEXIS 352 (Miss. 1963).

RESEARCH REFERENCES

Am. Jur.
76 Am. Jur. 2d, Unemployment Compensation § 88.

CJS.
81 C.J.S., Social Security and Public Welfare §§ 490-492, 508.

§ 71-5-525. Procedure [Repealed effective July 1, 2023].

The manner in which appealed claims shall be presented and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the Board of Review for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with an appealed claim. The department's entire file relative to the appealed claim shall be a part of such record and shall be considered as evidence. All testimony at any hearing upon an appealed claim shall be recorded, but need not be transcribed unless the claim is further appealed.

HISTORY: Codes, 1942, § 7385; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4f; Laws, 1964, ch. 442, § 1f; Laws, 2004, ch. 572, § 43; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 43; reenacted without change, Laws, 2010, ch. 559, § 43; reenacted without change, Laws, 2011, ch. 471, § 44; reenacted without change, Laws, 2012, ch. 515, § 44, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 43, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Procedure for review of employer's rate of contributions or contribution liability, see § 71-5-355.

JUDICIAL DECISIONS

1. In general.

Pursuant to Miss. R. Civ. P. 6(a) and 6(e), the claimant's time to appeal her case to the Mississippi Employment Security Commission Board of Review began on July 2, 2002, the day after the appeals referee mailed her decision to the claimant, and ended July 19, 2002, which reflected the addition of an additional three days for the claimant to respond, as required by Rule 6(e); therefore, the claimant's appeal was filed timely with the Board of Review. Miss. Empl. Sec. Comm'n v. Parker, 905 So. 2d 613, 2004

Miss. App. LEXIS 303 (Miss. Ct. App. 2004).

Notice of an employer's appeal of a referee's decision was sufficient to satisfy the claimant's minimum due process rights, where the Board of Review mailed a notice to the claimant but did not notify the claimant's attorney of the appeal. Notifying the claimant only and not the attorney satisfies minimum due process requirements so long as such notice is "reasonably calculated" to apprise the claimant of necessary information. Booth v. Mississippi Employment Sec. Com., 588 So. 2d 422, 1991 Miss. LEXIS 653 (Miss. 1991).

Board of review may consider appeal, at request of claimant, on the basis of the evidence submitted to the referee. Mississippi Employment Sec. Com. v. Wilks, 247 Miss. 737, 156 So. 2d 583, 1963 Miss. LEXIS 352 (Miss. 1963).

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation § 88.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 478 et seq.

§ 71-5-527. Witness fees.

Witnesses subpoenaed pursuant to Sections 71-5-515 through 71-5-533 shall be allowed fees at a rate fixed by the commission. Such fees shall be deemed a part of the expense of administering this chapter.

HISTORY: Codes, 1942, § 7386; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4g; Laws, 1964, ch. 442, § 1g.

Editor's Notes — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Witness fees generally, see § 25-7-47 et seq.

§ 71-5-529. Appeal to courts [Repealed effective July 1, 2023].

Any decision of the Board of Review, in the absence of an appeal therefrom as herein provided, shall become final ten (10) days after the date of notification; and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his administrative remedies as provided by this chapter. The department shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney employed by the department and designated by it for that purpose or, at the department's request, by the Attorney General.

HISTORY: Codes, 1942, § 7387; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4h; Laws, 1964, ch. 442, § 1h; Laws, 2004, ch. 572, § 44; Laws, 2007, ch. 606, § 17; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 44; reenacted without change, Laws, 2010, ch. 559, § 44; reenacted without change, Laws, 2011, ch. 471, § 45,; reenacted without change, Laws, 2012, ch. 515, § 45, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 44, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex

Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Judicial review of employer's rate of contributions or contribution liability, see § 71-5-355.

JUDICIAL DECISIONS

ANALYSIS

1. Untimely appeal; standard of review.
2. Untimely appeal: dismissal appropriate.

1. Untimely appeal; standard of review.

Employer filed for appeal from the decision of the Board of Review of the Mississippi Employment Security Commission, more than two weeks after the statutory deadline and apparently, based on the circuit court's decision to deny the Commission's motion to dismiss, demonstrated the requisite "good cause" for the untimely filing. However, the appellate court was left to assume that fact since the transcripts were not to be found, and further review of the record revealed an absence of any evidence that might have supported a finding of good cause; thus, the employer's failure to provide such evidence, when viewed under the present law and the appellate court's standard of review, required reversal of the circuit court's decision ordering a new hearing on behalf of the employer. Miss. Empl. Sec. Comm'n v. Gilbert Home Health Agency, 909 So. 2d 1142, 2005 Miss. App. LEXIS 63 (Miss. Ct. App. 2005).

2. Untimely appeal: dismissal appropriate.

Appellant had 20 days from the date of March 28, 2014 to appeal to the circuit court, but she filed her appeal on August 18, 2014, over four months late; the copy of the decision dated March 28, with the line stating "date mailed March 28," and resent to appellant on July 29, was admissible evidence of mailing under the business-records hearsay exception, and as appellant offered no proof of good cause other than her own statement that she never received the March 28 decision, which was not enough, her appeal was properly dismissed as untimely. Smith v. Miss. Dep't of Empl. Sec., 212 So. 3d 860, 2016 Miss. App. LEXIS 33 (Miss. Ct. App. 2016).

Former employee's appeal from the Mississippi Department of Employment Security Board of Review's decision to deny the employee unemployment benefits was dismissed because the employee filed the appeal one day too late, pursuant to Miss. Code Ann. §§ 71-5-529 and 71-5-531, and the employee presented insufficient evidence of good cause to expand the statutory deadline for the filing of the appeal. Keyes v. Miss. Dep't of Empl. Sec., 95 So. 3d 757, 2012 Miss. App. LEXIS 502 (Miss. Ct. App. 2012).

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation § 89.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 493 et seq.

§ 71-5-531. Court review [Repealed effective July 1, 2023].

Within ten (10) days after the decision of the Board of Review has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action, in the circuit court of the county in which the plaintiff resides, against the department for the review of such decision, in which action any other party to the proceeding before the Board of Review shall be made a defendant. In cases wherein the plaintiff is not a resident of the State of Mississippi, such action may be filed in the circuit court of the county in which the employer resides, the county in which the cause of action arose, or in the county of employment. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon the department or upon such person as the department may designate, and such service shall be deemed completed service on all parties; but there shall be left with the party so served as many copies of the petition as there are defendants, and the department shall forthwith mail one (1) such copy to each such defendant. With its answer, the department shall certify and file with said court all documents and papers and a transcript of all testimony taken in the matter, together with the Board of Review's findings of fact and decision therein. The department may also, in its discretion, certify to such court questions of law involved in any decision. In any judicial proceedings under this section, the findings of the Board of Review as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law. Such actions, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases. An appeal may be taken from the decision of the circuit court of the county in which the plaintiff resides to the Supreme Court of Mississippi, in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It shall not be necessary, in any judicial proceeding under this section, to enter exceptions to the rulings of the Board of Review, and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the Board of Review shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas or stay unless the Board of Review shall so order.

HISTORY: Codes, 1942, § 7388; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4i; Laws, 1964, ch. 442, § li; Laws, 1996, ch. 464, § 4; Laws, 2004, ch. 572, § 45; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 45; reenacted without change, Laws, 2010, ch. 559, § 45; reenacted without change, Laws, 2011, ch. 471, § 46; reenacted without change, Laws, 2012, ch. 515, § 46, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 45, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Signing petition for review, see § 1-3-75.

Judicial review of employer's rate of contribution or contribution liability, see § 71-5-355.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Collateral estoppel.
3. Supersedeas.
4. Review of findings of fact.
5. Review of the denial of benefits.
6. Time limitations.

1. In general.

Applicant was entitled to unemployment benefits upon termination from employment because substantial evidence was not presented below to support a finding that when filling out an employment application the applicant acted in such willful or wanton disregard of the employer's interest that disqualification of unemployment benefits was warranted, as the applicant did not, when applying for a job, intentionally misrepresent whether the employee had ever previously filed a workers' compensation claim or been injured on the job. Bedford Care Ctr. of Marion, LLC v. Nicholson, 218 So. 3d 1176, 2017 Miss. App. LEXIS 38 (Miss. Ct. App. 2017).

Record failed to support the conclusion of the Mississippi Department of Employment Security that a worker constituted an employee under Miss. Code Ann. § 71-5-11(J)(14) because the worker constituted an independent contractor; the worker set his own hours and received a commission, not an hourly wage, and the employer failed to exercise control, nor did it possess a right of control, over the details of the actual sales work at issue. College Network v. Miss. Dep't of Empl. Sec., 114 So. 3d 740, 2013 Miss. App. LEXIS 179 (Miss. Ct. App. 2013).

Benefits claimant was properly denied unemployment compensation because substantial evidence showed that he voluntarily left his job under Miss. Code Ann. § 71-5-513(A)(1)(a) when he turned in his keys following a dispute over pay and a request for time off; moreover, he failed to show good cause for leaving due to this dispute because the job was not detrimental to his health, safety, morals, or physical fitness. Waldrup v. Miss. Empl. Sec. Comm'n, 951 So. 2d 597, 2007 Miss. App. LEXIS 140 (Miss. Ct. App. 2007).

Appellate court affirmed the trial court's ruling that the employee was terminated for misconduct and not entitled to unemployment benefits as the employee never disputed his three disciplinary write-ups when they occurred, and the employer's policy allowed it to pay the employee for the full 40-hour work week if he was less than five minutes late. Thus, the evidence supported the finding that the employee's actions constituted misconduct for having three write-ups in one year. Daniels v. Miss. Empl. Sec. Comm'n, 914 So. 2d 268, 2005 Miss. App. LEXIS 771 (Miss. Ct. App. 2005).

In an appeal from a decision of the Mississippi Employment Security Commission (MESC), and the circuit court's affirmance thereon, the facts were: (1) the employee was warned in regard to an excessive number of sick days, early leaves and absences; (2) he received an unsatisfactory performance review because he had not been cooperative with campus security; (3) he was disruptive at a campus physical plant and he left work without permission; (3) he was placed on probation regarding his job performance; and finally, (4) he was arrested for robbery and possession of a firearm by a convicted felon. In its infinite wisdom, the appellate court concluded the employee was terminated, not because of the aforementioned performance issues (unrelated to his incarceration), but because of the events which surrounded his two day incarceration; in that respect, the poor fellow did not want his employer to know about his arrest, so he had his girlfriend call his employer and state that he would be absent for two days, and without the employee's permission, the girlfriend told the employer that same was due his mother's illness; his girlfriend lied, but he did not, the appellate court concluded his employer did not need to know the reason for said two day absence, and the denial of his application for unemployment benefits was reversed. Broome v. Miss. Empl. Sec. Comm'n, 921 So. 2d 360, 2005 Miss. App. LEXIS 397 (Miss. Ct. App. 2005), rev'd, 921 So. 2d 334, 2006 Miss. LEXIS 45 (Miss. 2006).

Pursuant to Miss. R. App. P. 2(a) and 4(a), the appellate court will not consider an appeal that is not timely filed. The former employee filed her notice of appeal regarding the denial of unemployment benefits roughly 42 days after the entry of the final judgment by the circuit court, and her appeal was subject to dismissal for that reason alone. Westbrook v. Miss. Empl. Sec. Comm'n, 910 So. 2d 1135, 2005 Miss. App. LEXIS 203 (Miss. Ct. App. 2005).

Employer filed for appeal from the decision of the Board of Review of the Mississippi Employment Security Commission, more than two weeks after the statutory deadline and apparently, based on the circuit court's decision to deny the Commission's motion to dismiss, demonstrated the requisite "good cause" for the untimely filing. However, the appellate court was left to assume that fact since the transcripts were not to be found, and further review of the record revealed an absence of any evidence that might have supported a finding of good cause; thus, the employer's failure to provide such evidence, when viewed under the present law and the appellate court's standard of review, required reversal of the circuit court's decision ordering a new hearing on behalf of the employer. Miss. Empl. Sec. Comm'n v. Gilbert Home Health Agency, 909 So. 2d 1142, 2005 Miss. App. LEXIS 63 (Miss. Ct. App. 2005).

There was substantial evidence to indicate that the employee violated the employer's policy prohibiting possession of a Zip drive on company premises. Further, substantial evidence was presented that the employee had knowledge that such action constituted a violation of company policy; therefore, the Mississippi Employment Security Commission Board of Review's decision to deny unemployment benefits was not arbitrary or capricious and was supported by substantial evidence. Howell v. Miss. Empl. Sec. Comm'n, 906 So. 2d 766, 2004 Miss. App. LEXIS 1145 (Miss. Ct. App. 2004).

Circuit court failed to use the proper standard of review as provided in Miss. Code Ann. § 71-5-531 because the fact that the Mississippi Employment Security Commission's decision conflicted with the decisions of the claims examiner and the appeal's referee did not, in and of itself, make the Commission's decision arbitrary, capricious and not supported by substantial evidence and the applicable law. Credible evidence supported the Commission's decision that the claimant was disqualified from receiving unemployment benefits because her actions in refusing to comply with company policy regarding working closing shifts constituted misconduct as defined in Miss. Code Ann. § 71-5-513(A)(1)(b). Miss. Empl. Sec. Comm'n v. Noil, 878 So. 2d 1089, 2004 Miss. App. LEXIS 723 (Miss. Ct. App. 2004).

Pursuant to Miss. Code Ann. §§ 71-5-531 and 71-5-513, the decision of the Mississippi Employment Security Commission denying the claimant unemployment benefits on the basis of misconduct was arbitrary, capricious, and improper because the employer failed to demonstrate by substantial, clear, and convincing evidence that the claimant was terminated for misconduct since (1) the employer did not prove that the claimant received training in the handling of dirty linen; (2) there was no evidence that the claimant had been given a copy of the infection control manual or that he had even seen it before; (3) the employer admitted that the conduct of bringing dirty linen through the clean linen door on one occasion was not grounds for termination. Gordon v. Miss. Empl. Sec. Comm'n, 864 So. 2d 1013, 2004 Miss. App. LEXIS 51 (Miss. Ct. App. 2004).

Former employee argued that he was not collaterally estopped from raising his wrongful-termination-based claims against his former employer because the Mississippi Employment Security Commission (MESC) found that he was terminated for misconduct, as he had been denied a fair opportunity to litigate his state claims because he was prohibited from calling witnesses; this issue should have been raised through a direct appeal of the MESC's Board of Review decision under Miss. Code Ann. § 71-5-531. Raiola v. Chevron U.S.A., Inc., 872 So. 2d 79, 2004 Miss. App. LEXIS 127 (Miss. Ct. App. 2004).

Finding of fact by the Mississippi Employment Security Commission's Board of

Review that a claimant was fired for misconduct is conclusive upon a court if it is supported by evidence and in the absence of fraud. Miss. Code Ann. § 71-5-531. Raiola v. Chevron U.S.A., Inc., 872 So. 2d 79, 2004 Miss. App. LEXIS 127 (Miss. Ct. App. 2004).

Where a trial court reversed the Mississippi Employment Security Commission's decision awarding unemployment benefits to a claimant, without giving a reason for doing so, the court's action was by definition arbitrary and capricious and was reversed. Miss. Empl. Sec. Comm'n v. Penn's Fish House, Inc., 866 So. 2d 503, 2004 Miss. App. LEXIS 128 (Miss. Ct. App. 2004).

Appellate court held that its task was to determine whether it was reasonable for the employee to believe he had been terminated; under the circumstances there was substantial evidence from which the appellate court could find that the employee believed he had been terminated due to the employer's attendance policy and in light of his unexcused absences, so he was entitled to unemployment benefits. Miss. Empl. Sec. Comm'n v. Nordstrom, 858 So. 2d 904, 2003 Miss. App. LEXIS 1034 (Miss. Ct. App. 2003).

Administrative decision that a day care center worker who left the center without permission after an argument with her supervisor over the care of a child was properly terminated for misconduct and was, therefore, ineligible to receive unemployment compensation benefits was supported by substantial evidence that the worker was asked not to leave because the center would then be understaffed and was told that if she did leave she would be considered as having quit. Otto v. Miss. Empl. Sec. Comm'n, 839 So. 2d 547, 2002 Miss. App. LEXIS 866 (Miss. Ct. App. 2002).

The trial court erred in reversing the decision of the Mississippi Employment Security Commission which allowed unemployment insurance benefits to an employee discharged from her position where the cause of her discharge had been her employer's dissatisfaction with her work performance and some errors she had made in bookkeeping procedure but where there was no evidence to show that the employee had failed to perform the work to the best of her ability or had wilfully failed to follow any instructions given by her employer or that she had been guilty of any wilful or intentional neglect or any misappropriation of funds. Wheeler v. Arriola, 408 So. 2d 1381, 1982 Miss. LEXIS 1858 (Miss. 1982).

This section [Code 1942, § 7388] clearly provides that judicial review of decisions of the board of review shall be confined to questions of law. Mississippi Employment Sec. Com. v. Blasingame, 237 Miss. 744, 116 So. 2d 213, 1959 Miss. LEXIS 527 (Miss. 1959); Mississippi Employment Sec. Com. v. Ballard, 252 Miss. 418, 174 So. 2d 367, 1965 Miss. LEXIS 1114 (Miss. 1965).

The unemployment compensation commission has the right of appeal to the supreme court from any judgment against it by the circuit court. Unemployment Compensation Com. v. Barlow, 191 Miss. 156, 1 So. 2d 241, 2 So. 2d 544, 1941 Miss. LEXIS 111 (Miss. 1941).

2. Collateral estoppel.

Although a former employee's challenge to a ruling of the Mississippi Employment Security Commission under Miss. Code Ann. § 71-5-531 was barred because she voluntarily dismissed her appeal of the ruling and was thus unable to collaterally attack the decision, her ADEA retaliation claim under 29 U.S.C.S. § 623(d) was not barred by collateral estoppel. Cox v. Desoto County, 564 F.3d 745, 2009 U.S. App. LEXIS 6933 (5th Cir. Miss.), cert. denied, 558 U.S. 824, 130 S. Ct. 139, 175 L. Ed. 2d 35, 2009 U.S. LEXIS 6879 (U.S. 2009).

Mississippi Employment Security Commission (MESC) found that plaintiff was terminated for misconduct and denied him unemployment benefits; as plaintiff failed to appeal the MESC's ruling, he was precluded by collateral estoppel from arguing in a civil action that the employer's termination decision was illegal. Raiola v. Chevron U.S.A., Inc., 872 So. 2d 79, 2004 Miss. App. LEXIS 127 (Miss. Ct. App. 2004).

3. Supersedeas.

Provisions of the unemployment compensation law stipulating that a petition for judicial review shall not act as a supersedeas or stay unless the board of review shall so order, and that such an appeal by the commission shall not have the effect of denying benefits to any claimant, do not make payments of awarded benefits prerequisite to an appeal to the supreme court from the circuit court judgment, there being a proviso merely for an appeal without supersedeas. Unemployment Compensation Com. v. Barlow, 191 Miss. 156, 1 So. 2d 241, 2 So. 2d 544, 1941 Miss. LEXIS 111 (Miss. 1941).

4. Review of findings of fact.

Because the Mississippi Department of Employment Security's Board of Review supported its decision that a terminated employee was not disqualified from receiving unemployment benefits for misconduct with substantial evidence—the employee's testimony that the employee had not intentionally lied to supervisors, that the employee brought home company information only to protect the information and to complete work, and that the employee's personal internet use was neither unusual or concerning—the decision was neither arbitrary, nor capricious. Columbus Light & Water Dep't v. Miss. Dep't of Empl. Sec., 281 So. 3d 920, 2019 Miss. App. LEXIS 105 (Miss. Ct. App. 2019).

Administrative law judge found that the employer failed to prove that the employee's actions were misconduct, and the Board of Review's decision was not made in a whimsical manner and the judgment was not arbitrary or capricious, and was instead supported by substantial evidence. Franklin Collection Serv. v. Miss. Dep't of Empl. Sec., 184 So. 3d 330, 2016 Miss. App. LEXIS 19 (Miss. Ct. App. 2016).

Although company policy called for automatic termination, the employer offered no proof that the employee deliberately misrepresented a processing fee, and while the company had ample reason to terminate the employee, a termination for cause does not necessarily require that unemployment benefits be denied; the administrative law judge (ALJ) found that the cited reason for termination did not amount to the requisite misconduct to preclude benefits, the Board of Review adopted the findings of the ALJ, and the findings were supported by substantial evidence and were conclusive. Franklin Collection Serv. v. Miss. Dep't of Empl. Sec., 184 So. 3d 330, 2016 Miss. App. LEXIS 19 (Miss. Ct. App. 2016).

Appellate court was precluded from taking any new evidence regarding the reliability of Mississippi Department of Employment Security's records as there was no evidence of fraud in the findings made by a review board regarding the timeliness of an applicant's appeal of the denial of benefits; rather, the evidence in the record established that the applicant's appeal was in fact untimely. Onyia v. Miss. Empl. Sec. Comm'n, 98 So. 3d 1136, 2012 Miss. App. LEXIS 617 (Miss. Ct. App. 2012).

Substantial evidence supported the decision to deny a former prison employee unemployment benefits based on misconduct where the warden testified that inmates had taken items out of the kitchen while she was the kitchen supervisor, she had possessed unauthorized computer games at work, possibly causing them to be used on the computer in the food supervisor's office, she may have allowed an inmate into the kitchen who was not authorized to be in that location at that time, and she had brought unauthorized items into the correctional facility. Henry v. Miss. Dep't of Empl. Sec., 962 So. 2d 94, 2007 Miss. App. LEXIS 487 (Miss. Ct. App. 2007).

Where the school district failed to renew claimant's contract as a physical education teacher and head basketball coach based on its dissatisfaction with the basketball program and the physical education program, the cited reasons did not amount to the requisite misconduct necessary to preclude claimant from receiving unemployment benefits; the circuit court's decision affirming the award of unemployment benefits was supported by substantial evidence under Miss. Code Ann. § 71-5-531. Greenwood Pub. Sch. Dist. v. Miss. Dep't of Empl. Sec., 962 So. 2d 684, 2007 Miss. App. LEXIS 113 (Miss. Ct. App. 2007).

Finding that the employee had not engaged in misconduct while on the job in an action concerning the denial of unemployment benefits was inappropriate based on the record, which consisted of the employee's testifying that she did not return to work after November 21, 2003, and that she did not provide her employer with a doctor's excuse; the circuit court's review should have been limited to questions of law as required by Miss. Code Ann. § 71-5-531. Bedford Care Ctr. v. Kirk, 935 So. 2d 1135, 2006 Miss. App. LEXIS 573 (Miss. Ct. App. 2006).

While trial court's decision to reverse the finding of the Mississippi Employment Security Commission (MESC) Board of Review that held that the employee had quit her job voluntarily as it was not supported by substantial evidence was affirmed, the trial court erred in making a factual determination as to whether the employee had quit or had been fired as the trial court sat as a court of appeals and its jurisdiction was confined to questions of law. Gilbreath v. Miss. Empl. Sec. Comm'n, 910 So. 2d 682, 2005 Miss. App. LEXIS 177 (Miss. Ct. App. 2005).

Decision of the Board of Review for the Mississippi Employment Security Commission denying unemployment benefits was supported by substantial evidence, where the referee found the employee at a casino accepted a gratuity from a patron in the form of a "comp ticket," which security guards were not allowed to give under the employer's established policy; such conduct showed an intentional disregard of the employer's interest. Hardy v. Miss. Empl. Sec. Comm'n, 864 So. 2d 1045, 2004 Miss. App. LEXIS 69 (Miss. Ct. App. 2004).

Evidence was sufficient to support the finding that the claimant's misconduct in not divulging the computer password to the employee was conduct evincing such willful and wanton disregard of the employer's interest as was found in deliberate violations or disregard of standards of behavior which the employer had the right to expect from his employee; the employer had an expectation that the claimant would divulge the password so that its daily operations could be carried out. Brown v. Magnolia Reg'l Health Ctr., 847 So. 2d 297, 2003 Miss. App. LEXIS 500 (Miss. Ct. App. 2003).

Denial by the Board of Review of the Mississippi Employment Security Commission of unemployment benefits for employee misconduct under Miss. Code Ann. § 71-5-513A(1)(b) was supported by substantial evidence and was conclusive under Miss. Code Ann. § 71-5-531 where the employee was discharged for smoking while hazardous waste was on a forklift; the smoking incident rose to the level of misconduct under the unemployment law as the employee had been cited for four safety violations in the previous seven months, two of which had resulted in suspensions. Miss. Empl. Sec. Comm'n v. Barnes, 853 So. 2d 153, 2003 Miss. App. LEXIS 727 (Miss. Ct. App. 2003).

Findings of fact by Employment Security Commission Board of Review are conclusive if supported by substantial evidence and without fraud. Hoerner Boxes v. Mississippi Empl. Sec. Comm'n, 693 So. 2d 1343, 1997 Miss. LEXIS 231 (Miss. 1997).

An employer failed to meet his burden of proving disqualifying misconduct, arising from a fight between 2 employees, by substantial, clear and convincing evidence, where the only eyewitness who testified at the hearing was the employee, and the employer offered a report prepared by a security officer, an unsigned summary of witness testimony without any proof of who prepared it, 3 handwritten statements of witnesses, and a list of safety rules which included a prohibition of fighting or provoking a fight, since uncorroborated hearsay testimony is insufficient to rise to the required level of substantial evidence. Mississippi Employment Sec. Com. v. McLane-Southern, Inc., 583 So. 2d 626, 1991 Miss. LEXIS 435 (Miss. 1991).

Scope of review of both Supreme Court and Circuit Court is limited to findings of Board of Review, and order of Board of Review on facts is conclusive if supported by substantial evidence, absent fraud. Melody Manor, Inc. v. McLeod, 511 So. 2d 1383, 1987 Miss. LEXIS 2706 (Miss. 1987).

Findings by Board of Review of Employment Security Commission that claimant was overpaid because of error in initial evaluation of claim was determination of fact which should not be reversed by circuit court since it was supported by substantial evidence, but question whether overpayment could be collected was not passed upon by referee or Board, and thus court should not pass upon questions of law not determined by administrative agencies. Mississippi Employment Sec. Com. v. Sellers, 505 So. 2d 281, 1987 Miss. LEXIS 2480 (Miss. 1987).

The word "evidence" in the statute should be construed to mean substantial evidence; thus, a denial of unemployment compensation would be reversed where the only evidence supporting the decision was a hearsay letter alleging that the employee had refused an offer of work. Williams v. Mississippi Employment Sec. Com., 395 So. 2d 964, 1981 Miss. LEXIS 1965 (Miss. 1981).

In an action by an employer against the Mississippi Employment Security Commission challenging a ruling that employees were entitled to unemployment benefits as the result of an unjustified lockout by the employer, the circuit court erred in reversing the decision of the Commission where there was substantial evidence to support the finding that the lockout was occasioned solely by the employer and was without justification and that the employees were ready and willing to continue working. Mississippi Employment Sec. Com. v. Georgia-Pacific Corp., 394 So. 2d 299, 1981 Miss. LEXIS 1897 (Miss. 1981).

An order of the board of review of the employment security commission as to facts, if supported by evidence and in the absence of fraud, is conclusive upon the trial court on review. Mississippi Employment Sec. Com. v. Fortenberry, 193 So. 2d 142, 1966 Miss. LEXIS 1282 (Miss. 1966); Mississippi Employment Sec. Com. v. Mixon, 248 Miss. 399, 159 So. 2d 181, 1964 Miss. LEXIS 268 (Miss. 1964); Mississippi Employment Sec. Com. v. Wilks, 247 Miss. 737, 156 So. 2d 583, 1963 Miss. LEXIS 352 (Miss. 1963).

Where evidence amply supported the finding of the commission that an employee who quit her job in a moment of pique during a brief misunderstanding with her employer had quit suitable employment voluntarily and was not entitled to benefits, the court was without statutory authority to enter a contrary judgment. Mississippi Employment Sec. Com. v. Rakestraw, 254 Miss. 56, 179 So. 2d 830, 1965 Miss. LEXIS 923 (Miss. 1965).

Finding of board of review that claimant voluntarily left her employment because of pregnancy, held supported by substantial evidence. Mississippi Employment Sec. Com. v. Corley, 246 Miss. 43, 148 So. 2d 715, 1963 Miss. LEXIS 415 (Miss. 1963).

Findings of fact by the board of review under the unemployment compensation law, being amply supported, should have been taken as conclusive both by the trial court and the supreme court on review. Mississippi Unemployment Compensation Com. v. Avent, 192 Miss. 94, 4 So. 2d 684 (Miss. 1941), dismissed, Avent v. Mississippi Unemployment Co. Com., 316 U.S. 641, 62 S. Ct. 947, 86 L. Ed. 1727, 1942 U.S. LEXIS 752 (U.S. 1942).

5. Review of the denial of benefits.

Determination that a hotel employee committed misconduct and was, therefore, disqualified from receiving unemployment benefits was supported by substantial evidence because the testimony of a hotel manager that an investigation by the manager revealed that the employee, while a guest of the hotel, used vulgar and inappropriate language toward a housekeeper and that the housekeeper felt very uncomfortable about working with the employee supported the finding that the employee's behavior constituted misconduct. Mayes v. Miss. Dep't of Empl. Sec., — So. 3d —, 2021 Miss. App. LEXIS 288 (Miss. Ct. App. July 20, 2021).

Circuit court properly affirmed the decision of the Board of Review of the Mississippi Department of Employment Security denying the former employee's claim for unemployment benefits as the Board found that he was disqualified from receiving benefits based on his misconduct because it was evident that the employee's racially charged comments amounted to an intentional disregard of the standards of behavior which his employer had the right to expect from him; and his conduct evidenced a complete disregard of his employer's interest. Kidd v. Miss. Dep't of Empl. Sec., 202 So. 3d 1283, 2016 Miss. App. LEXIS 381 (Miss. Ct. App. 2016).

Court of appeals erred by reevaluating the evidence and substituting its judgment for that of the Mississippi Employment Security Commission (MESC) because the MESC's decision that an employer did not prove misconduct was supported by substantial evidence; the evidence substantially supported the MESC's conclusion that the employer did not prove that an employee falsified her time sheets, and it found evidence of the employee's inefficient use of technology, not falsification of hours worked. Jackson County Bd. of Supervisors v. Miss. Empl. Sec. Comm'n, 129 So. 3d 178, 2013 Miss. LEXIS 641 (Miss. 2013).

Substantial evidence under Miss. Code Ann. 71-5-531 supported the denial of unemployment benefits to a claimant as her actions constituted misconduct under Miss. Code Ann § 71-5-513 as she was terminated for insubordination where: (1) she shut down her machine without supervisor approval and refused to sign the written warning detailing her actions; (2) she was loud and argumentative during the write-up and when she arrived to pick up her paycheck; and (3) she showed up to work two hours prior to the time she was instructed. Lee v. Miss. Empl. Sec. Comm'n, 105 So. 3d 1156, 2012 Miss. App. LEXIS 804 (Miss. Ct. App. 2012).

Employee sought unemployment benefits after she was terminated from her employment with a city. A circuit court did not err in determining employee was entitled to benefits because the city failed to meet its burden of establishing substantial, clear, and convincing proof that the employee was discharged for misconduct. Miss. Empl. Sec. Comm'n v. Johnson, 9 So. 3d 1170, 2009 Miss. App. LEXIS 150 (Miss. Ct. App. 2009).

Where an attorney appealed the denial of unemployment benefits, sufficient evidence supported the decision to deny the attorney unemployment benefits because the evidence supported the finding of misconduct based on the attorney's failure to complete tasks adequately. Cummings v. Miss. Dep't of Empl. Sec., 980 So. 2d 340, 2008 Miss. App. LEXIS 251 (Miss. Ct. App. 2008).

Where the claimant was denied unemployment compensation benefits by the Mississippi Employment Security Commission, he initiated a timely appeal to the Board of Review by filing a second interstate claim form within the fourteen-day deadline set forth in Miss. Code Ann. § 71-5-519. Miss. Empl. Sec. Comm'n v. Ward, 923 So. 2d 264, 2006 Miss. App. LEXIS 175 (Miss. Ct. App. 2006).

6. Time limitations.

Appellant had 20 days from the date of March 28, 2014 to appeal to the circuit court, but she filed her appeal on August 18, 2014, over four months late; the copy of the decision dated March 28, with the line stating "date mailed March 28," and resent to appellant on July 29, was admissible evidence of mailing under the business-records hearsay exception, and as appellant offered no proof of good cause other than her own statement that she never received the March 28 decision, which was not enough, her appeal was properly dismissed as untimely. Smith v. Miss. Dep't of Empl. Sec., 212 So. 3d 860, 2016 Miss. App. LEXIS 33 (Miss. Ct. App. 2016).

Where an attorney appealed the denial of unemployment benefits, it was error to find that the attorney's appeal was untimely based on the failure to include a civil cover sheet, because the attorney demonstrated good cause for an extension of the filing deadline since the cover sheet requirement did not bar the otherwise timely notice of appeal. Cummings v. Miss. Dep't of Empl. Sec., 980 So. 2d 340, 2008 Miss. App. LEXIS 251 (Miss. Ct. App. 2008).

Former employee's appeal from the Mississippi Department of Employment Security Board of Review's decision to deny the employee unemployment benefits was dismissed because the employee filed the appeal one day too late, pursuant to Miss. Code Ann. §§ 71-5-529 and 71-5-531, and the employee presented insufficient evidence of good cause to expand the statutory deadline for the filing of the appeal. Keyes v. Miss. Dep't of Empl. Sec., 95 So. 3d 757, 2012 Miss. App. LEXIS 502 (Miss. Ct. App. 2012).

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation §§ 89, 90.

24 Am. Jur. Pl & Pr Forms (Rev), Unemployment Compensation, Forms 11 et seq.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 493 et seq.

§ 71-5-533. Appeal by commission.

The commission shall be authorized to appeal from decisions of the board of review involving questions of interpretation of this chapter. Such appeals shall be served upon the other parties to the decision of the board of review and shall be heard by the courts in the manner as provided in Section 71-5-531. Such an appeal by the commission under this section shall not have the effect of denying benefits to any claimant who has been awarded benefits by virtue of the decision of the board of review from which the appeal is taken.

HISTORY: Codes, 1942, § 7389; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4j; Laws, 1964, ch. 442, § 1j.

Editor's Notes — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

JUDICIAL DECISIONS

1. In general.

Provisions of the unemployment compensation law stipulating that a petition for judicial review shall not act as a supersedeas or stay unless the board of review shall so order, and that such an appeal by the commission shall not have the effect of denying benefits to any claimant, do not make payments of awarded benefits a prerequisite to an appeal to the supreme court from the circuit court judgment, there being a proviso merely for an appeal without supersedeas. Unemployment Compensation Com. v. Barlow, 191 Miss. 156, 1 So. 2d 241, 2 So. 2d 544, 1941 Miss. LEXIS 111 (Miss. 1941).

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation § 89.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 493 et seq.

§ 71-5-535. Waiver of rights void.

Any agreement by an individual to waive, release, or commute his right to benefits or any other rights under this chapter shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this section shall, for each offense, be fined not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or be imprisoned for not more than six (6) months, or both.

HISTORY: Codes, 1942, § 7434; Laws, 1936, ch. 176; Laws, 1938, ch. 147.

RESEARCH REFERENCES

Am. Jur.
76 Am. Jur. 2d, Unemployment Compensation § 29.

CJS.
81 C.J.S., Social Security and Public Welfare § 396.

§ 71-5-537. Limitation of fees.

No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the board of review, the commission, their representatives, or by any court or any officer thereof. Any individual claiming benefits in any proceedings before the commission, the board of review, their representatives, or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the board of review. Any person who violates any provision of this section shall, for each such offense, be fined not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00), or imprisoned for not more than six (6) months, or both.

HISTORY: Codes, 1942, § 7435; Laws, 1936, ch. 176; Laws, 1938, ch. 147.

Editor's Notes — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Limitation of fees in workmen's compensation cases, see § 71-3-63.

JUDICIAL DECISIONS

1. In general.

An employee was exempt under § 71-5-537 from paying court costs in pursuing his appeal from a denial of unemployment compensation benefits. Coleman v. Mississippi Employment Sec. Comm'n, 662 So. 2d 626, 1995 Miss. LEXIS 496 (Miss. 1995).

The provisions of this section [Code 1942, § 7435] clearly do not exempt the employment security commission from the payment of court costs. Mississippi Employment Sec. Com. v. Wilks, 251 Miss. 744, 171 So. 2d 157, 1965 Miss. LEXIS 898 (Miss. 1965).

The board of review is not required to approve, prior to hearing of an appeal to it, a contract fixing the fee of claimant's attorney. Mississippi Employment Sec. Com. v. Wilks, 247 Miss. 737, 156 So. 2d 583, 1963 Miss. LEXIS 352 (Miss. 1963).

Limitation of fee of attorney appearing before board of review held not to deprive claimant of constitutional right where neither claimant nor his attorney appeared at the hearing of the appeal. Mississippi Employment Sec. Com. v. Wilks, 247 Miss. 737, 156 So. 2d 583, 1963 Miss. LEXIS 352 (Miss. 1963).

RESEARCH REFERENCES

ALR.

Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

§ 71-5-539. No assignment of benefits; exemptions.

Any assignment, pledge or incumbrance of any right to benefits which are or may become due or payable under this chapter shall be void. Such rights to benefits shall be exempt from levy, execution, attachment or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided in this section shall be void. This section does not apply to the deduction from benefits provided by Section 71-5-516.

HISTORY: Codes, 1942, § 7436; Laws, 1936, ch. 176; Laws, 1938, ch. 147; Laws, 1982, ch. 480, § 5, eff from and after October 1, 1982.

Cross References — Property exempt from execution generally, see §§ 85-3-1 et seq.

§ 71-5-541. Construction [Repealed effective July 1, 2023].

A.(1) In the administration of this chapter, the department shall cooperate with the Department of Labor to the fullest extent consistent with the provisions of this chapter and shall take such action, through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the Federal Unemployment Tax Act, the Wagner-Peyser Act and the Federal-State Extended Unemployment Compensation Act of 1970, all as amended.

(2) In the administration of the provisions of this section, which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, as amended, the department shall take such actions as may be necessary:

(a) To ensure that the provisions are so interpreted and applied as to meet the requirements of such federal act as interpreted by the United States Department of Labor; and

(b) To secure to this state the full reimbursement of the federal share of extended benefits paid under this chapter that are reimbursable under the federal act; and also

(c) To limit the amount of extended benefits paid as may be necessary so that the reimbursement of the federal share of extended benefits paid shall remain at one-half (1/2) of the total extended benefits paid.

B. As used in this section, unless the context clearly requires otherwise:

(1) "Extended benefit period" means a period which:

(a) Begins with the third week after a week for which there is a state "on" indicator; and

(b) Ends with either of the following weeks, whichever occurs later:

(i) The third week after the first week for which there is a state "off" indicator; or

(ii) The thirteenth consecutive week of such period.

No extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) For weeks beginning after September 25, 1982, there is a "state 'on' indicator" for a week if the rate of insured unemployment under this chapter for the period consisting of such week and the immediately preceding twelve (12) weeks:

(a) Equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding period of thirteen (13) weeks ending in each of the preceding two (2) calendar years; and

(b) Equaled or exceeded five percent (5%).

The determination of whether there has been a state "on" or "off" indicator beginning or ending any extended benefit period shall be made under this subsection as if (i) paragraph (2) did not contain subparagraph (a) thereof, and (ii) the figure "5" contained in subparagraph (b) thereof were "6"; except that, notwithstanding any such provision of this subsection, any week for which there would otherwise be a "state 'on' indicator" shall continue to be such week and shall not be determined to be a week for which there is a "state 'off' indicator."

(3) There is a "state 'off' indicator" for a week if, for the period consisting of such week and the immediately preceding twelve (12) weeks, either subparagraph (a) or (b) of paragraph (2) was not satisfied.

(4) "Rate of insured unemployment," for purposes of paragraphs (2) and (3) of this subsection, means the percentage derived by dividing:

(a) The average number of continued weeks claimed for regular state compensation in this state for weeks of unemployment with respect to the most recent period of thirteen (13) consecutive weeks, as determined by the department on the basis of its reports to the United States Secretary of Labor; by

(b) The average monthly employment covered under this chapter for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such period of thirteen (13) weeks.

(5) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 USCS Section 8501-8525) other than extended benefits.

(6) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 USCS Section

8501-8525) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

(7) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(8) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(a) Has received, prior to such week, all of the regular benefits that were available to him under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 USCS Section 8501-8525) in his current benefit year that includes such week.

For the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or

(b) Has no, or insufficient, wages on the basis of which he could establish a new benefit year that would include such week, his benefit year having expired prior to such week; and

(c)(i) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and

(ii) Has not received and is not seeking unemployment benefits under the Unemployment Compensation Law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is considered an exhaustee; however, the reference in this subsection to the Virgin Islands shall be inapplicable effective on the day on which the United States Secretary of Labor approves under Section 3304(a) of the Internal Revenue Code of 1954, an unemployment compensation law submitted to the Secretary by the Virgin Islands for approval.

(9) "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under Section 3304 of the Internal Revenue Code of 1954 (26 USCS Section 3304).

C. Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the department, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

D. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the department finds that with respect to such week:

(1) He is an "exhaustee" as defined in subsection B(8) of this section.

(2) He has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

(3) For a week beginning after September 25, 1982, he has, during his base period, been paid wages for insured work equal to not less than forty (40) times his weekly benefit amount; he has been paid wages for insured work during at least two (2) quarters of his base period, and he has, during that quarter of his base period in which his total wages were highest, been paid wages for insured work equal to not less than twenty-six (26) times the minimum weekly benefit amount.

E. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year; however, benefits paid to individuals during eligibility periods beginning before October 1, 1983, shall be computed to the next higher multiple of One Dollar ($1.00), if not a multiple of One Dollar ($1.00); and benefits paid to individuals during eligibility periods beginning on or after October 1, 1983, shall be computed to the next lower multiple of One Dollar ($1.00), if not a multiple of One Dollar ($1.00). In no event shall the weekly extended benefit amount payable to an individual be more than two (2) times the amount of the reimbursement of the federal share of extended benefits paid.

F.(1) The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(a) Fifty percent (50%) of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year; however, benefits paid to individuals during eligibility periods beginning before October 1, 1983, shall be computed to the next higher multiple of One Dollar ($1.00), if not a multiple of One Dollar ($1.00), and benefits paid to individuals during eligibility periods beginning on or after October 1, 1983, shall be computed to the next lower multiple of One Dollar ($1.00), if not a multiple of One Dollar ($1.00); or

(b) Thirteen (13) times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year.

(2) The total extended benefits otherwise payable to an individual who is filing an interstate claim under the interstate benefit payment plan shall not exceed two (2) weeks whenever an extended benefit period is not in effect for such week in the state where the claim is filed.

(3) In no event shall the total extended benefit amount payable to any eligible individual with respect to his applicable benefit year be more than two (2) times the amount of the reimbursement of the federal share of extended benefits paid.

G.(1) Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of state "off" indicators, the department shall make an appropriate public announcement.

(2) Computations required by the provisions of subsection B(4) shall be made by the department, in accordance with regulations prescribed by the United States Secretary of Labor.

H. Extended benefits paid under the provisions of this section which are not reimbursable from federal funds shall be charged to the experience-rating record of base period employers.

I.(1) Notwithstanding the provisions of subsections C and D of this section, an individual shall be disqualified for receipt of extended benefits if the department finds that during any week of his eligibility period:

(a) He has failed either to apply for or to accept an offer of suitable work (as defined under paragraph (3)) to which he was referred by the department; or

(b) He has failed to furnish tangible evidence that he has actively engaged in a systematic and sustained effort to find work, unless such individual is not actively engaged in seeking work because such individual is:

(i) Before any court of the United States or any state pursuant to a lawfully issued summons to appear for jury duty;

(ii) Hospitalized for treatment of an emergency or a life-threatening condition.

The entitlement to benefits of any individual who is determined not to be actively engaged in seeking work in any week for the foregoing reasons shall be decided pursuant to the able and available requirements in Section 71-5-511 without regard to the disqualification provisions otherwise applicable under Section 71-5-541. The conditions prescribed in clauses (i) and (ii) of this subparagraph (b) must be applied in the same manner to individuals filing claims for regular benefits.

(2) Such disqualification shall begin with the week in which such failure occurred and shall continue until he has been employed in each of eight (8) subsequent weeks (whether or not consecutive) and has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly extended benefit amount.

(3) For the purpose of subparagraph (a) of paragraph (1) the term "suitable work" means any work which is within the individual's capabilities to perform, if:

(a) The gross average weekly remuneration payable for the work exceeds the sum of the individual's weekly extended benefit amount plus the amount, if any, of supplemental unemployment benefits (as defined in Section 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week;

(b) The wages payable for the work equal the higher of the minimum wages provided by Section 6(a)(1) of the Fair Labor Standards Act of 1938 (without regard to any exemption), or the state or local minimum wage; and

(c) The position was offered to the individual in writing or was listed with the state employment service; and

(d) Such work otherwise meets the definition of "suitable work" for regular benefits contained in Section 71-5-513A(4) to the extent that such criteria of suitability are not inconsistent with the provisions of this paragraph (3); and

(e) The individual cannot furnish satisfactory evidence to the department that his prospects for obtaining work in his customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work contained in Section 71-5-513A(4) without regard to the definition specified by this paragraph (3).

(4) Notwithstanding any provisions of subsection I to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions set forth herein under Section 71-5-513A(4).

(5) The employment service shall refer any claimant entitled to extended benefits under this section to any suitable work which meets the criteria prescribed in paragraph (3).

(6) An individual shall be disqualified for extended benefits for the week, or fraction thereof, which immediately follows the day on which he left work voluntarily without good cause (as defined in Section 71-5-513A(1)), was discharged for misconduct connected with his work, or refused suitable work (except as provided in subsection I of this section), and for each week thereafter until he has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly benefit amount, as determined in each case.

(7) The provisions of paragraphs I(1) through (6) of this section shall not apply to claims for weeks of unemployment beginning after March 6, 1993, and before January 1, 1995, and during that period the provisions of this chapter applicable to claims for regular compensation shall apply.

J. Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

HISTORY: Codes, 1942, § 7389.5; Laws, 1971, ch. 519, § 15; Laws, 1977, ch. 497, § 9; Laws, 1981, ch. 466, § 2; Laws, 1982, ch. 480, § 6; Laws, 1983, ch. 364, § 5; Laws, 1984, ch. 498, § 4; Laws, 1986, ch. 316, § 4; Laws, 1986, ch. 335; Laws, 1993, ch. 329, § 1; Laws, 2004, ch. 572, § 46; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 46; reenacted without change, Laws, 2010, ch. 559, § 46;

reenacted without change, Laws, 2011, ch. 471, § 47; reenacted without change, Laws, 2012, ch. 515, § 47, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 46, eff from and after April 3, 2019.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in statutory references by substituting "The conditions prescribed in items (i) and (ii) of this subparagraph (b)" for "The conditions prescribed in clauses (i) and (ii) of this subparagraph (b)" in the last paragraph of (I)(1)(b) and "The provisions of subsection I(1) through (6) of this section" for "The provisions of paragraphs (I)(1) through (6) of this section" in (7). The Joint Committee ratified the corrections at its July 13, 2011, meeting.

Editor's Notes — Laws of 1977, ch. 497, § 10, provides:

"SECTION 10. In the event the provisions of P.L. 94-566, the Unemployment Compensation Amendments of 1976, which mandate unemployment insurance coverage for state and local government employees, are declared unconstitutional, the amendments, which mandate unemployment insurance coverage for state and local government employees, adopted to Sections 71-5-11, 71-5-351, 71-5-355, 71-5-357, 71-5-359, 71-5-361, 71-5-511, 71-5-513 and 71-5-541, Mississippi Code of 1972, at the 1977 Regular Session of the Legislature shall stand repealed."

Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Cross References — Experience-rating record of employers, see § 71-5-355.

Federal Aspects— Trade Expansion Act of 1962, see 19 USCS §§ 1801 et seq.

Automotive Products Trade Act of 1965, see 19 USCS §§ 2001 et seq.

Federal Unemployment Tax Act, see 26 USCS §§ 3301 et seq.

Wagner-Peyser Act, see 29 USCS §§ 49 et seq.

Fair Labor Standards Act of 1938, see 29 USCS §§ 201 et seq.

Section 6(a)(1) of the Fair Labor Standards Act of 1938 is classified at 29 USCS § 206(a)(1).

Railroad Unemployment Insurance Act, see 45 USCS §§ 351 et seq.

JUDICIAL DECISIONS

1. In general.

Insubordination is misconduct within the Mississippi Employment Security Law, "ordinarily adequate that benefits be denied." Mississippi Employment Sec. Com. v. McGlothin, 556 So. 2d 324, 1990 Miss. LEXIS 5 (Miss.), cert. denied, 498 U.S. 879, 111 S. Ct. 211, 112 L. Ed. 2d 171, 1990 U.S. LEXIS 4937 (U.S. 1990).

A state may not deny unemployment benefits on the ground that the individual has refused to abandon sincerely held religious beliefs. Mississippi Employment Sec. Com. v. McGlothin, 556 So. 2d 324, 1990 Miss. LEXIS 5 (Miss.), cert. denied, 498 U.S. 879, 111 S. Ct. 211, 112 L. Ed. 2d 171, 1990 U.S. LEXIS 4937 (U.S. 1990).

A public school teacher's wearing of a head-wrap as an expression of her religious and cultural heritage as a member of the African Hebrew Israelites in violation of the school's dress code was constitutionally protected religious and cultural expression, such that the Mississippi Employment Security Commission had no authority to deny her claim for unemployment compensation benefits after she was discharged for insubordination when she refused to discontinue wearing the head-wrap, even though there is no specific tenet of the African Hebrew Israelites mandating that women wear headdress, the teacher was not a regular participant in the organized activities of a particular church, synagogue or other religious body, she might have been "selective in wearing the traditional head-wrap" in that at times she did not wear it, and even though her conduct may have been misconduct had it not been constitutionally protected expression. Mississippi Employment Sec. Com. v. McGlothin, 556 So. 2d 324, 1990 Miss. LEXIS 5 (Miss.), cert. denied, 498 U.S. 879, 111 S. Ct. 211, 112 L. Ed. 2d 171, 1990 U.S. LEXIS 4937 (U.S. 1990).

RESEARCH REFERENCES

ALR.

Unemployment compensation: Leaving employment in pursuit of other employment as affecting right to unemployment compensation. 46 A.L.R.5th 659.

Am. Jur.

76 Am. Jur. 2d, Unemployment Compensation §§ 6, 7.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 7-11.

§ 71-5-543. Authorization to waive recovery of benefits paid to ineligible persons under certain circumstances.

(1) Except as otherwise provided in this section, the executive director of the department may waive recovery of benefits paid under this chapter to a person if the person is subsequently found to be ineligible for the benefit and the benefits were paid as a direct result of unemployment caused by a natural disaster which is declared by the President of the United States in accordance with Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. All waivers shall be granted based upon a consistent methodology and shall include consideration of ability to repay and other similar considerations.

(2) The waiver authorized in subsection (1) of this section shall not be granted if:

(a) The individual receiving the benefit is found to be guilty of fraud involving filing for, or receipt of, the benefits; or

(b) The size of fund index (as defined in Section 71-5-355) for the year in which a request for a waiver is made is less than five-tenths (.5).

(3) All waiver requests shall be considered on a case by case basis.

HISTORY: Laws, 2007, ch. 606, § 2, eff from and after July 1, 2007.

Federal Aspects— Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, is Act May 22, 1974, P.L. 93-288, 88 Stat. 143, which is codified generally as 42 USCS §§ 5121 et seq.

§ 71-5-545. Self-Employment Assistance Program.

(1) **Definitions.** As used in this section:

(a) "Self-employment assistance activities" means activities (including entrepreneurial training, business counseling, technical assistance and any other requirements set forth by the executive director in regulation) approved by the executive director in which an individual, identified through an established system consistent with the system requirements of Section 303(j)(1)(A) of the Social Security Act (SSA) as likely to exhaust regular unemployment benefits, participates for the purpose of establishing a business and becoming self-employed.

(b) "Self-employment assistance allowance" means an allowance, payable in lieu of, and on the same schedule as, regular benefits and from the unemployment fund established under Section 71-5-451, to an individual participating in self-employment assistance activities who meets the requirements of this section.

(c) "Regular benefits" means benefits payable to an individual under this chapter (including benefits payable to Federal civilian employees and to ex-service members pursuant to 5 USC Chapter 85) excluding emergency unemployment benefits and extended benefits.

(d) "Full-time basis" shall have the meaning contained in regulations prescribed by the executive director who has authority to set, modify and rescind such regulations as are required for the proper and efficient administration of this section.

(e) "SEAP" means the Self-Employment Assistance Program.

(2) **Amount of self-employment assistance allowance.** The weekly allowance payable under this section to an individual shall be equal to the weekly benefit amount for regular benefits otherwise payable under Section 71-5-503.

The sum of (a) the allowance paid under this section, and (b) regular benefits paid under this chapter with respect to any benefit year shall not exceed the maximum benefit amount as established by Section 71-5-507 with respect to such benefit year.

(3) **Eligibility for self-employment assistance allowance.** The allowance described in subsection (1) of this section shall be payable to an individual at the same interval, on the same terms, and subject to the same conditions as regular benefits under this chapter, except that:

(a) The requirements of Sections 71-5-511 and 71-5-513 relating to availability for work, active search for work, and refusal to accept work are not applicable to an individual while engaged in establishment of a business;

(b) The requirements of Section 71-5-505 relating to other earnings are not applicable to income earned from self-employment by such individual while engaged in establishment of a business;

(c) An individual who meets the requirements of this section shall be considered to be unemployed under Section 71-5-501 et seq.; and

(d) An individual who fails to participate in self-employment assistance activities as prescribed by this section or by the executive director, or who fails to actively engage on a full-time basis in activities (which may include training) relating to the establishment of a business and becoming self-employed, shall be disqualified for any week in which the failure occurs.

(4) **Limitation on receipt of self-employment assistance allowances.** The aggregate number of individuals receiving the allowance under this section at any time shall not exceed five percent (5%) of the number of individuals receiving regular benefits as defined in Section 71-5-541.

(5) **Steering committee membership.** The executive director shall appoint a steering committee. Each member of the steering committee shall have equal voting rights on the SEAP Steering Committee. The voting members of the board who are not state employees or state elected officials shall be entitled to reimbursement of their reasonable expenses incurred in carrying out their duties under this chapter, from any funds available for that purpose.

(6) **Steering committee purpose.** The steering committee shall initially adopt the rules of operation for the SEAP and shall select and certify SEAP training programs. The rules shall be enforced by the department. Rules shall include the continuing role of the steering committee. Participants in training programs that are not certified by the SEAP shall not be paid SEAP benefits and any benefits paid to them shall be considered overpaid and shall be due to be repaid to the department and the Unemployment Trust Fund.

(7) **Rules and regulations for operation of SEAP by the Mississippi Department of Employment Security.** The executive director shall cause regulations adopted by the SEAP Steering Committee to be adopted by the department and the executive director may adopt other regulations as necessary for proper administration of this section.

(8) **Financing costs of self-employment assistance allowances.** Allowances paid under this section shall not be charged to employers as provided under provisions of this chapter relating to the noncharging of regular benefits as defined in Section 71-5-541, and shall be used in the computation of the annual unemployment tax rate as noncharges for receipt of unemployment benefits paid by this chapter. Noncharging provisions do not apply to unemployment compensation for federal employees, unemployment compensation for ex-servicemen or unemployment compensation paid to individuals based upon their wages earned with reimbursing employers, except as allowed by Section 71-5-357(b)(iv). In the event federal regulations allow changes to noncharging provisions associated with the SEAP, regulations may be adopted by the SEAP Steering Committee to make such changes as are reasonable and appropriate to the Mississippi program and charging or not charging of SEAP benefits.

(9) **Federal law and regulations.** Nothing in this section or the rules adopted related to this section or any other provision of this chapter is intended to be inconsistent with laws and regulations prescribed by the United States Department of Labor. Any part of this section or this chapter that is determined to not be in conformity with United State Department of labor regulations and applicable federal laws will not be enforced until such time as the deficiencies can be remedied.

(10) **Effective date and termination date.** The provisions of this section will apply to weeks beginning on or after the first Sunday sixty (60) days following passage, or after any plan required by the United States Department of Labor is approved by such department, whichever date is later. The authority provided by this section shall terminate as of the end of the week preceding the date when federal law no longer authorizes the provisions of this

section, unless such date is a Saturday in which case the authority shall terminate as of such date.

HISTORY: Laws, 2012, ch. 515, § 59, eff from and after July 1, 2012.

Federal Aspects— Chapter 85 of Title 5 of the US Code relates to unemployment compensation and is codified as 5 USCS §§ 8501 et seq.

Section 303(j)(1)(A) of the Social Security Act is codified as 42 USCS § 503(j)(1)(A).

CHAPTER 7.

DRUG AND ALCOHOL TESTING OF EMPLOYEES

Sec.
71-7-1. Definitions.
71-7-3. Election of employer to conduct drug and alcohol testing voluntary; furnishing by employers of written policy statements on drug and alcohol use prior to implementation of testing; dissemination; standard language; notification of job applicants; signing of statements regarding testing policies by applicants or employees; testing of government employees, applicants, and elected officials.
71-7-5. Conduct of testing generally; authorized types of tests.
71-7-7. Neutral selection drug and alcohol testing; routine testing; testing of employees participating in rehabilitation.
71-7-9. Collection, storage and transportation of specimens; time of testing; rights of employees upon receipt of positive results; discharge, discipline, etc., of employees generally; payment of costs of testing.
71-7-11. Conduct of confirmation tests.
71-7-13. Designation of employee or applicant as handicapped due to test result; discharge, discipline, etc., of employee on basis of test result or refusal to submit; construction and application of chapter generally.
71-7-15. Confidentiality of information related to drug and alcohol testing; discharge or discipline of employee for refusal to consent to authorized release of information.
71-7-17. Repealed.
71-7-19. Disclosure and contents of laboratory test result reports.
71-7-21. Promulgation of rules by State Board of Health.
71-7-23. Civil actions for damages and injunctive relief for violations of chapter authorized; award of attorney fees.
71-7-25. Limitation period for civil actions for violations of chapter; relief available; effect of compliance with chapter by employer; presumption as to validity of test results; actions for defamation, etc.
71-7-27. Procedure for and effect of election to conduct testing policy or program; procedure for rescission of election; effect of failure to make election or rescission of election.
71-7-29. Application of chapter to employers subject to federal testing laws.
71-7-31. Private employer establishing testing program not deemed agent or instrument of the state.
71-7-33. Requirement of abstention from use of tobacco products during non-working hours as condition of employment prohibited.

Editor's Notes — Laws of 1991, ch. 610, § 18, provided for the repeal of this chapter effective July 1, 1993. Subsequently Laws of 1994, ch. 323, § 18, amended Laws of 1991, ch. 610, § 18, so as to delete the provision for the repeal of this chapter.

§ 71-7-1. Definitions.

As used in this chapter, the following terms shall have the meaning ascribed to them herein unless the context requires otherwise:

(a) "Confirmation test" means a drug and alcohol test on a specimen to substantiate the results of a prior drug and alcohol test on the specimen. The confirmation test must use an alternate method of equal or greater sensitivity than that used in the previous drug and alcohol test.

(b) "Drug" means an illegal drug, or a prescription or nonprescription medication.

(c) "Alcohol" means ethyl alcohol.

(d) "Drug and alcohol test" means a chemical test administered for the purpose of determining the presence or absence of a drug or metabolites in a person's body fluids.

(e) "Employee" means any person who supplies a service for remuneration or pursuant to any contract for hire to a private or public employer in this state.

(f) "Employee assistance program" means a program provided by an employer offering assessment, short-term counseling and referral services to employees, including drug, alcohol and mental health programs.

(g) "Employer" means any individual, organization or government body, subdivision or agency thereof, including partnership, association, trustee, estate, corporation, joint-stock company, insurance company or legal representative, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, and any common carrier by mail, motor, water, air or express company doing business in or operating within this state, which has one or more employees within this state, or which has offered or may offer employment to one or more individuals in this state.

(h) "Illegal drug" means any substance, other than alcohol, having psychological and/or physiological effects on a human being and that is not a prescription or nonprescription medication, including controlled dangerous substances and controlled substance analogs or volatile substances which produce the psychological and/or physiological effects of a controlled dangerous substance through deliberate introduction into the body.

(i) "Initial test" means an initial drug test to determine the presence or absence of drugs or their metabolites in specimens.

(j) "Laboratory" means any laboratory that is currently certified or accredited by the federal Clinical Laboratory Improvement Act, as amended, by the federal Substance Abuse and Mental Health Services Administration, by the College of American Pathologists, or that has been deemed by the State Board of Health to have been certified or accredited by an appropriate federal agency, organization or another state.

(k) "Neutral selection basis" means a mechanism for selecting employees for drug tests that: (i) results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected, and (ii) does not give an employer discretion to waive the selection of any employee selected under the mechanism.

(*l*) "Prescription or nonprescription medication" means a drug prescribed for use by a duly licensed physician, dentist or other medical practitioner licensed to issue prescriptions or a drug that is authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments or injuries.

(m) "Reasonable suspicion drug and alcohol testing" means drug and alcohol testing based on a belief that an employee is using or has used drugs in violation of the employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience, and may be based upon, among other things:

(i) Observable phenomena, such as direct observation of drug use and/or the physical symptoms or manifestations of being under the influence of a drug;

(ii) Abnormal conduct or erratic behavior while at work, absenteeism, tardiness or deterioration in work performance;

(iii) A report of drug use provided by reliable and credible sources and which has been independently corroborated;

(iv) Evidence that an individual has tampered with a drug and alcohol test during his employment with the current employer;

(v) Information that an employee has caused or contributed to an accident while at work;

(vi) Evidence that an employee is involved in the use, possession, sale, solicitation or transfer of drugs while working or while on the employer's premises or operating the employer's vehicle, machinery or equipment.

(n) "Specimen" means a tissue or product of the human body chemically capable of revealing the presence of drugs in the human body.

HISTORY: Laws, 1991, ch. 610, § 1; reenacted and codified, Laws, 1994, ch. 323, § 1; Laws, 2002, ch. 432, § 1, eff from and after July 1, 2002.

Federal Aspects— The Clinical Laboratory Improvement Act is codified in 42 USCS § 263a.

OPINIONS OF THE ATTORNEY GENERAL

A municipality may not require an employee involved in an accident to undergo post accident drug and alcohol testing if there is no reasonable suspicion of drug or alcohol use, although such a test may be required if an employee is involved in an accident and there is a reasonable suspicion of drug or alcohol use. Mitchell, July 10, 1998, A.G. Op. #98-0266.

This chapter does not authorize municipalities to require an employee involved in an accident to undergo post accident drug and alcohol testing if there is no reasonable suspicion of drug or alcohol use. Langford, April 23, 1999, A.G. Op. #99-0173.

RESEARCH REFERENCES

ALR.

Liability for discharge of at-will employee for refusal to submit to drug testing. 79 A.L.R.4th 105.

Validity, under Federal Constitution, of regulations, rules, or statutes requiring random or mass drug testing of public employees or persons whose employment is regulated by state, local, or federal government. 86 A.L.R. Fed. 420.

Am. Jur.

16B Am. Jur. 2d, Constitutional Law § 900, 901.

62A Am. Jur. 2d, Privacy §§ 55-57.

20 Am. Jur. Pl & Pr Forms (Rev), Privacy, Form 1 et seq.

32 Am. Jur. Trials 120, Invasion of Privacy.

CJS.

28 C.J.S., Drugs and Narcotics § 213.

Practice References.

Janice Goodman, Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Lex K. Larson, Employment Screening (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

§ 71-7-3. Election of employer to conduct drug and alcohol testing voluntary; furnishing by employers of written policy statements on drug and alcohol use prior to implementation of testing; dissemination; standard language; notification of job applicants; signing of statements regarding testing policies by applicants or employees; testing of government employees, applicants, and elected officials.

(1) For the purposes of this chapter, the election of a public or private employer to conduct drug and alcohol testing is voluntary. If an employer elects voluntarily to follow this chapter, the employer must follow all the terms of this chapter without exception.

(2) Any employee who may be required by an employer to submit to a drug and alcohol test shall be provided, at least thirty (30) days prior to the implementation of a drug and alcohol testing program, a written policy statement from the employer which contains:

(a) A general statement of the employer's policy on employee drug use which shall include identifying both the grounds on which an employee may be required to submit to a drug and alcohol test and the actions the employer may take against an employee on the basis of a positive confirmed drug and alcohol test result, or other violation of the employer's drug use policy;

(b) A statement advising the employee of the existence of this chapter;

(c) A general statement concerning confidentiality;

(d) Procedures for how employees can confidentially report the use of prescription or nonprescription medications prior to being tested;

(e) Circumstances under which drug and alcohol testing may occur, and a description of which positions will be subject to testing on a reasonable suspicion, neutral selection or other basis;

(f) The consequences of refusing to submit to a drug and alcohol test;

(g) Information on opportunities for assessment and rehabilitation if an employee has a positive confirmed test result and the employer determines that discipline or discharge are not necessary or appropriate;

(h) A statement that an employee who receives a positive confirmed drug and alcohol test result may contest the accuracy of that result or explain it;

(i) A list of all drugs for which the employer might test. Each drug shall be described by its brand name, common name, or its chemical name;

(j) A statement regarding any applicable collective bargaining agreement or contract.

(3) An employer shall post the notice in an appropriate and conspicuous location on the employer's premises and copies of the policy shall be made available for inspection during regular business hours by employees in the employer's personnel office or other suitable locations.

(4) The State Board of Health shall develop standard language for those sections of drug and alcohol testing notices described in paragraphs (b), (c) and (d) of subsection (2) of this section.

(5) An employer who conducts job applicant drug and alcohol testing shall notify the applicant, in writing, upon application and prior to the collection of the specimen for the drug and alcohol test, that the applicant may be tested for the presence of drugs or their metabolites.

(6) An employee or job applicant required to submit to a drug and alcohol test may be requested by an employer to sign a statement indicating that he has read and understands the employer's drug and alcohol testing policy and/or notice. An employee's or job applicant's refusal to sign such a statement shall not invalidate the results of any drug and alcohol test, or bar the employer from administering the drug and alcohol test or from taking action consistent with the terms of an applicable collective bargaining agreement or the employer's drug and alcohol testing policy, or from refusing to hire the job applicant.

(7) If the employer is a government employer, the decision of whether to require employees and/or applicants for employment to submit to drug and alcohol tests in accordance with the provisions of this chapter shall be made by the executive head or governing body of the department, agency, institution or political subdivision authorized to employ. However, in the case of any elected public official of the State of Mississippi or of any department, agency, institution or political subdivision thereof, the decision of whether any person who such official is authorized to employ, or any person who any governing board, commission or body upon which or as a member of which such public official has been elected by the people to serve is authorized to employ, shall be required to submit to a drug and alcohol test in accordance with the provisions of this chapter shall be made:

(a) By the governing board, commission or body upon which or as a member of which such public official has been elected to serve; or

(b) If the elected public official has not been elected to serve upon or as a member of a governing board, commission or body, by the elected official himself.

HISTORY: Laws, 1991, ch. 610, § 2; reenacted and codified, Laws, 1994, ch. 323, § 2; Laws, 2002, ch. 432, § 2; Laws, 2004, ch. 454, § 1, eff from and after July 1, 2004.

Cross References — Workers' compensation insurers required to establish safety programs for employees of insureds, including policies for drug and alcohol testing, see § 71-3-121.

Promulgation of rules, see § 71-7-21.

Election by employer to conduct testing policy or program, see § 71-7-27.

Procedure for election to conduct testing policy or program, see § 71-7-27.

Application of chapter to employers subject to federal laws or regulations governing drug and alcohol testing, see § 71-7-29.

OPINIONS OF THE ATTORNEY GENERAL

Section 71-7-3 requires that the employer provide the employee a written policy statement at least thirty days prior to the implementation of the drug testing program. Myers, October 11, 1996, A.G. Op. #96-0655.

RESEARCH REFERENCES

ALR.

Liability for discharge of at-will employee for refusal to submit to drug testing. 79 A.L.R.4th 105.

Negligent discharge of employee. 53 A.L.R.5th 219.

Practice References.

Janice Goodman, Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Lex K. Larson, Employment Screening (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

§ 71-7-5. Conduct of testing generally; authorized types of tests.

(1) Except as otherwise provided in Section 71-7-27, all drug and alcohol testing conducted by employers shall be in conformity with the standards established in this section, other applicable provisions of this chapter, and all applicable regulations promulgated pursuant to this chapter.

(2) An employer is authorized to conduct the following types of drug and alcohol tests:

(a) Employers may require job applicants to submit to a drug and alcohol test as a condition of the employment application and may use a refusal to submit to a test or positive confirmed test result as a basis for refusal to hire.

(b) An employer may require all employees to submit to reasonable suspicion drug and alcohol testing. There is created a rebuttable presumption that the employer had reasonable suspicion to test for drugs if the specimen provided by the employee tested positive for drugs in a confirmatory drug test.

(c) An employer may require all employees to submit to neutral selection drug and alcohol testing pursuant to Section 71-7-9.

(d) An employer may administer drug and alcohol testing or require that the employee submit himself to drug and alcohol testing as provided under Section 71-3-121 in the event that the employee sustains an injury at work or asserts a work-related injury.

HISTORY: Laws, 1991, ch. 610, § 3; reenacted and codified, Laws, 1994, ch. 323, § 3; Laws, 2012, ch. 522, § 9, eff from and after July 1, 2012.

Editor's Notes — Laws of 2012, ch. 522, §§ 10 and 11, provide:

"SECTION 10. The Workers' Compensation Commission shall promulgate a written statement specifying the changes made to the Workers' Compensation Law by this act to every employer in this state subject to the Workers' Compensation Law. Within ten (10) days of receipt of this written statement from the Commission, every employer shall post the Commission's statement in a conspicuous place or places in and about his place or places of business and adjacent to the Notice of Coverage as required by Section 71-3-81.

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, and shall apply to injuries occurring on or after July 1, 2012."

Cross References — Neutral selection testing, see § 71-7-7.

Confirmation testing, see § 71-7-11.

OPINIONS OF THE ATTORNEY GENERAL

A municipality may not require an employee involved in an accident to undergo post accident drug and alcohol testing if there is no reasonable suspicion of drug or alcohol use, although such a test may be required if an employee is involved in an accident and there is a reasonable suspicion of drug or alcohol use. Mitchell, July 10, 1998, A.G. Op. #98-0266.

An employer may require all applicants to submit to drug and alcohol testing. Rector, Oct. 10, 2003, A.G. Op. 03-0301.

RESEARCH REFERENCES

ALR.

Validity and operation of pre-employment drug testing – State cases. 96 A.L.R.5th 485.

Am. Jur.

63C Am. Jur. 2d, Public Officers and Employees §§ 198, 267 et seq.

Practice References.

Janice Goodman, Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Lex K. Larson, Employment Screening (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

§ 71-7-7. Neutral selection drug and alcohol testing; routine testing; testing of employees participating in rehabilitation.

(1) Subject to the provisions of this chapter and any applicable collective bargaining agreement or contract, any nongovernment employer may require as a condition of employment or as a condition of continued employment that employees submit to neutral selection drug and alcohol testing.

(2) Subject to the provisions of this chapter, any government employer may require as a condition of employment or as a condition of continued employment that employees submit to neutral selection drug and alcohol testing; provided, however, that the employees tested and the criteria for such testing shall be determined by the government employer, based upon the extent to which the government employer:

(a) Is engaged in law enforcement;
(b) Has national or state security responsibilities;
(c) Has drug interdiction responsibilities; or
(d) Has positions which:

(i) Authorize employees to carry firearms;

(ii) Give employees access to sensitive information;

(iii) Authorize employees to engage in law enforcement;

(iv) Require employees, as a condition of employment, to obtain a security clearance; or

(v) Require employees to engage in activities affecting public health or safety.

(3) An employer may require an employee to submit to a drug and alcohol test if the test is conducted as part of a routinely scheduled employee fitness for duty medical examination that is part of the employer's established policy and/or which is scheduled routinely for all members of an employment classification or group.

(4) An employer may require an employee to submit to neutral selection or routine drug and alcohol tests if the employee in the course of his employment enters a drug abuse rehabilitation program, and as a follow-up to such rehabilitation, or if previous drug and alcohol testing of the employee within a twelve-month period resulted in a positive confirmed test result, or the drug and alcohol test is conducted in accordance with the terms of an applicable collective bargaining agreement or contract that permits the employer to administer drug and alcohol tests on a neutral selection or routine basis.

(5) If an employee is participating in drug abuse rehabilitation, drug and alcohol testing may be conducted by the rehabilitation provider as deemed appropriate by the provider.

HISTORY: Laws, 1991, ch. 610, § 4; reenacted and codified, Laws, 1994, ch. 323, § 4, eff from and after passage (approved March 14, 1994).

Cross References — Authorized tests generally, see § 71-7-5.
Confirmation testing, see § 71-7-11.

OPINIONS OF THE ATTORNEY GENERAL

An employer may adopt a policy to require all employees that are subject to neutral selection testing pursuant to this section to submit simultaneously to drug and alcohol screening at regular intervals without submitting the employee to a fitness for duty medical exam. Rector, Oct. 10, 2003, A.G. Op. 03-0301.

RESEARCH REFERENCES

Practice References.

Janice Goodman, Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Lex K. Larson, Employment Screening (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

§ 71-7-9. Collection, storage and transportation of specimens; time of testing; rights of employees upon receipt of positive results; discharge, discipline, etc., of employees generally; payment of costs of testing.

(1) The collection of specimens shall be performed under reasonable and sanitary conditions. Individual dignity shall be preserved to the extent practicable.

(2) Specimens shall be collected in a manner reasonably calculated to prevent substitution of specimens and interference with the collection or testing of specimens.

(3) Specimen collection shall be documented, and the documentation procedures shall include:

(a) Labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test results; and

(b) An opportunity for the employee or applicant to provide any information that he considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant medical information. The provision of this information shall not preclude the administration of the drug and alcohol test, but shall be taken into account in interpreting any positive confirmed results.

(4) Specimen collection, storage and transportation to the testing site will be performed in a manner which will reasonably preclude specimen contamination or adulteration, and specimen testing for drugs shall conform to scientifically accepted analytical methods and procedures.

(5) Each confirmation test conducted under this chapter, not including the taking or collecting of a specimen to be tested, shall be conducted by a laboratory.

(6) A specimen for a drug and alcohol test may be taken or collected by any of the following persons:

(a) A physician, a registered nurse or a licensed practical nurse;

(b) A qualified person employed by a laboratory; or

(c) Any person deemed qualified by the State Board of Health.

(7) A person who collects or takes a specimen for a drug and alcohol test conducted pursuant to this chapter shall collect an amount sufficient for at least two (2) drug and alcohol tests as defined by federal statutes and regulations.

(8) Any drug and alcohol testing conducted or requested by an employer shall occur during or immediately after the regular work period of current employees, and shall be deemed to be performed during work time for purposes of determining compensation and benefits for current employees.

(9) Every specimen that produces a positive confirmed result shall be preserved in a frozen state by the laboratory that conducts the confirmation test for a period of ninety (90) days from the time the results of the positive confirmed test are mailed or otherwise delivered to the employer. During this period, the employee who has provided the specimen shall be permitted by the

employer to have a portion of the specimen retested, at the employee's expense, at a laboratory chosen by the employee. The laboratory that has performed the test for the employer shall be responsible for the transfer of the portion of the specimen to be retested, and for the integrity of the chain of custody during such transfer.

(10) Within five (5) working days after receipt of a positive confirmed test result report from the laboratory that conducted the test, an employer shall, in writing, inform an employee of such positive test result and inform the employee in writing of the consequences of such a report and the options available to him.

(11) An employee may request and receive from the employer a copy of the test result report.

(12) Within ten (10) working days after receiving notice of a positive confirmed test result, the employee may submit information to an employer explaining the test results, and why the results do not constitute a violation of the employer's policy. If an employee's explanation of the positive test results is not satisfactory to the employer, a written explanation submitted by the employer as to why the employee's explanation is unsatisfactory, along with the report of positive results, shall be made a part of the employee's medical and personnel records.

(13) Except as otherwise provided in Section 71-7-13(10), an employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee on the basis of a positive test result that has not been verified by a confirmatory test.

(14) An employer may not discharge, discipline, discriminate against or request or require rehabilitation of an employee on the basis of medical history information revealed to the employer pursuant to this chapter unless the employee had an affirmative obligation to provide such information before, upon or after hire.

(15) An employer who performs on-site drug and alcohol tests or specimen collection shall establish chain-of-custody procedures to ensure proper record keeping, handling, labeling and identification of all specimens to be tested.

(16) The employer shall pay the costs of all drug and alcohol tests to which he requires, or requests, an employee or job applicant to submit. The employee or job applicant shall pay the costs of any additional drug and alcohol tests requested by the employee or job applicant.

HISTORY: Laws, 1991, ch. 610, § 5; reenacted and codified, Laws, 1994, ch. 323, § 5; Laws, 2002, ch. 432, § 3, eff from and after July 1, 2002.

Cross References — Conduct of testing and authorized types of tests generally, see § 71-7-5.

Conduct of confirmation tests, see § 71-7-11.

RESEARCH REFERENCES

ALR.

Liability for discharge of at-will employee for refusal to submit to drug testing. 79 A.L.R.4th 105.

Negligent discharge of employee. 53 A.L.R.5th 219.

§ 71-7-11. Conduct of confirmation tests.

Only laboratories shall conduct confirmation drug and alcohol tests. All confirmation tests shall use an alternate method of equal or greater sensitivity than that used on the initial drug and alcohol test. If an initial drug and alcohol test is negative, there shall be no confirmation drug and alcohol test.

HISTORY: Laws, 1991, ch. 610, § 6; reenacted and codified, Laws, 1994, ch. 323, § 6; Laws, 2002, ch. 432, § 4, eff from and after July 1, 2002.

Cross References — Confirmation testing generally, see § 71-7-11.
Confirmation testing generally, see § 71-7-11.

§ 71-7-13. Designation of employee or applicant as handicapped due to test result; discharge, discipline, etc., of employee on basis of test result or refusal to submit; construction and application of chapter generally.

(1) An employee or job applicant whose drug and alcohol test result is confirmed as positive in accordance with the provisions of this chapter shall not, by virtue of the result alone, be defined as a person with a "handicap."

(2) An employer who discharges or disciplines an employee on the basis of a positive confirmed drug and alcohol test in accordance with this chapter shall be considered to have discharged or disciplined the employee for cause.

(3) An employee discharged on the basis of a confirmed positive drug and alcohol test in accordance with this chapter shall be considered to have been discharged for willful misconduct.

(4) A physician-patient relationship is not created between an employee or job applicant, and an employer or any person performing or evaluating the drug and alcohol test, solely by the establishment or implementation of a drug and alcohol testing program.

(5) This chapter does not prevent an employer from establishing reasonable work rules related to employee possession, use, sale or solicitation of drugs, including convictions for drug-related offenses, and taking action based upon a violation of any of those rules.

(6) This chapter shall not be retroactive and shall not abrogate any right an employer may have to conduct drug and alcohol tests prior to July 1, 1991. A drug and alcohol test conducted by an employer before July 1, 1991, shall not be subject to this chapter.

(7) If an employee refuses to submit to drug and alcohol testing administered in accordance with this chapter, the employer shall not be barred from discharging, or disciplining, or referring the employee to a drug abuse assessment, treatment and rehabilitation program at a site certified by the Department of Mental Health.

(8) An employer, in addition to any appropriate personnel actions, may refer any employee found to have violated the employer's policy on drug use to an employee assistance program for assessment, counseling and referral for treatment or rehabilitation as appropriate. Such treatment or rehabilitation shall be at a site certified by the Department of Mental Health.

(9) This chapter does not prohibit an employer from conducting medical screening or other tests required by any statute, rule or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities. Such screenings or tests shall be limited to the specific substances expressly identified in the applicable statute, rule or regulation, unless prior written consent of the employee is obtained for other tests.

(10) An employer may temporarily suspend or transfer an employee to another position after obtaining the results of a positive on-site initial test. An employer may discharge an employee after obtaining the results of a positive confirmed test.

(11) Nothing in this chapter shall affect any right of an employer to terminate the employment of any person for reasons not related to a drug and alcohol testing program implemented pursuant to the provisions of this chapter.

HISTORY: Laws, 1991, ch. 610, § 7; reenacted and codified, Laws, 1994, ch. 323, § 7, eff from and after passage (approved March 14, 1994).

Cross References — Discharge or discipline of employee for refusal to consent to authorized release of information relating to testing, see § 71-7-15.

JUDICIAL DECISIONS

1. Sufficiency of evidence.

Miss. Code Ann. § 71-7-13(3) provided that an employee discharged on the basis of a confirmed positive drug and alcohol test would be considered to have been discharged for willful misconduct; the evidence and testimony contained in the record clearly showed that the employee tested positive for marijuana on the random drug test, and nothing in the record supported the employee's claim that he was "set up" or that his urine was switched, such that the record contained sufficient evidence to support the conclusion that the employee's actions constituted disqualifying misconduct. Curtis v. Miss. Empl. Sec. Comm'n, 878 So. 2d 1094, 2004 Miss. App. LEXIS 712 (Miss. Ct. App. 2004).

RESEARCH REFERENCES

ALR.

Liability for discharge of at-will employee for refusal to submit to drug testing. 79 A.L.R.4th 105.

Private employee's loss of employment because of refusal to submit to drug test as affecting right to unemployment compensation. 86 A.L.R.4th 309.

§ 71-7-15. Confidentiality of information related to drug and alcohol testing; discharge or discipline of employee for refusal to consent to authorized release of information.

(1) All information, interviews, reports, statements, memoranda and test results, written or otherwise, received by the employer through its drug and alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with this chapter.

(2) Any information obtained by an employer pursuant to this chapter shall be the property of the employer.

(3) An employer shall not release to any person other than the employee or job applicant, or employer medical, supervisory or other personnel, as designated by the employer on a need to know basis, information related to drug and alcohol test results unless:

(a) The employee or job applicant has expressly, in writing, granted permission for the employer to release such information;

(b) It is necessary to introduce a positive confirmed test result into an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding, or the information must be disclosed to a federal or state agency or other unit of the state or United States government as required under law, regulation or order, or in accordance with compliance requirements of a state or federal government contract, or disclosed to a drug abuse rehabilitation program for the purpose of evaluation or treatment of an employee; or

(c) There is a risk to public health or safety that can be minimized or prevented by the release of such information; provided, however, that unless such risk is immediate, a court order permitting the release shall be obtained prior to the release of the information.

(4) The confidentiality provisions provided for in this section shall not apply to other parts of an employee's or job applicant's personnel or medical files.

(5) If an employee refuses to sign a written consent form for release of information to persons as permitted in this chapter, the employer shall not be barred from discharging or disciplining the employee.

HISTORY: Laws, 1991, ch. 610, § 8; reenacted and codified, Laws, 1994, ch. 323, § 8, eff from and after passage (approved March 14, 1994).

Cross References — Workers' compensation insurers required to establish safety programs for employees of insureds, including policies for drug and alcohol testing, see § 71-3-121.

RESEARCH REFERENCES

Am. Jur.

62A Am. Jur. 2d, Privacy §§ 55-57.

20 Am. Jur. Pl & Pr Forms (Rev), Privacy, Form 1 et seq.

32 Am. Jur. Trials 120, Invasion of Privacy.

8 Am. Jur. Proof of Facts 3d 185, Proof of Violation of Privacy Rights in Employment Drug Testing.

Practice References.

Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Lex K. Larson, Employment Screening (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

§ 71-7-17. Repealed.

Repealed by Laws, 2002, ch. 432, § 5, eff from and after July 1, 2002.

§ 71-7-17. [Laws, 1991, ch. 610, § 9; reenacted and codified, Laws, 1994, ch. 323, § 9, eff from and after passage (approved March 14, 1994).]

Editor's Notes — Former § 71-7-17 provided certain standards for laboratories conducting drug and alcohol confirmation tests.

§ 71-7-19. Disclosure and contents of laboratory test result reports.

(1) A laboratory shall disclose to the employer a written test result report within five (5) working days after the test.

(2) All laboratory reports of a test result shall, at a minimum, state:

(a) The name and address of the laboratory that performed the test and the positive identification of the person tested;

(b) Any positive confirmed drug and alcohol test results on a specimen which tested positive on an initial test, or a negative drug and alcohol test result on a specimen; provided, however, that reports should not make reference to initial or confirmatory tests when reporting positive or negative results;

(c) A list of the drugs tested for;

(d) The type of tests conducted for both initial and confirmation tests and the cut-off levels of the tests; and

(e) The report shall not disclose the presence or absence of any physical or mental condition or of any drug other than the specific drug and its metabolites that an employer requests to be identified.

HISTORY: Laws, 1991, ch. 610, § 10; reenacted and codified, Laws, 1994, ch. 323, § 10, eff from and after passage (approved March 14, 1994).

Cross References — Workers' compensation insurers required to establish safety programs for employees of insureds, including policies for drug and alcohol testing, see § 71-3-121.

Rights of employees upon receipt by employer of positive confirmed test results, see § 71-7-9.

§ 71-7-21. Promulgation of rules by State Board of Health.

The State Board of Health shall adopt rules concerning:

(a) Standards for drug and alcohol testing laboratory certification, suspension and revocation of certification;

(b) Body specimens that are appropriate for drug and alcohol testing;

(c) Methods of analysis and procedures to ensure reliable drug and alcohol testing results, including standards for initial tests and confirmatory tests;

(d) Guidelines on how to establish cut-off detection levels for drugs or their metabolites for the purposes of determining a positive test result;

(e) Chain-of-custody procedures to ensure proper identification, labeling and handling of specimens being tested; and

(f) Retention and storage procedures to ensure reliable results on confirmation tests and retests.

HISTORY: Laws, 1991, ch. 610, § 11; reenacted and codified, Laws, 1994, ch. 323, § 11, eff from and after passage (approved March 14, 1994).

Cross References — Workers' compensation insurers required to establish safety programs for employees of insureds, including policies for drug and alcohol testing, see § 71-3-121.

Development of standard for drug and alcohol testing notices, see § 71-7-3.

§ 71-7-23. Civil actions for damages and injunctive relief for violations of chapter authorized; award of attorney fees.

(1) A person alleging a violation of this chapter may bring an action for injunction relief or damages, or both.

(2) For the purposes of this chapter, damages shall be limited to the recovery of compensatory damages directly resulting from injury or loss caused by each violation of this chapter.

(3) A person or collective bargaining agent may bring an action under this section only after first exhausting all applicable grievance procedures and arbitration proceeding requirements under a collective bargaining agreement; provided, however, that the person's right to bring an action under this section shall not be affected by a decision of a collective bargaining agent not to pursue a grievance.

(4) If a violation of this chapter is found and damages are awarded, reasonable attorney fees may be awarded to the person if the court or arbitrator finds that an employer has knowingly or recklessly violated this chapter.

HISTORY: Laws, 1991, ch. 610, § 12; reenacted and codified, Laws, 1994, ch. 323, § 12, eff from and after passage (approved March 14, 1994).

Cross References — Limitation period and remedies, see § 71-7-25.

§ 71-7-25. Limitation period for civil actions for violations of chapter; relief available; effect of compliance with chapter by employer; presumption as to validity of test results; actions for defamation, etc.

(1) Upon an alleged violation of the provisions of this chapter, a person must institute a civil action in a court of competent jurisdiction within one (1) year of the alleged violation or the exhaustion of any internal administrative remedies available to the person, or be barred from obtaining the relief provided for in subsection (2) of this section.

(2) Relief for violations of this chapter shall be limited to:

(a) An injunction to restrain the continued violation of this chapter;

(b) The reinstatement of the person to the same position held before the unlawful drug and alcohol testing, disciplinary action or discharge, or to an equivalent position;

(c) The reinstatement of full employee benefits and seniority rights;

(d) Compensation for lost wages, benefits and other remuneration to which the person would have been entitled but for a violation of this chapter;

(e) Payment by the employer of reasonable costs.

(3) Any employer who complies with the provisions of this chapter shall be without liability from all civil actions arising from any drug and alcohol testing programs or procedures performed in compliance with this chapter.

(4) Pursuant to any claim alleging a violation of this chapter, including a claim under this chapter in which it is alleged that an employer's action with respect to a person was based on an incorrect test result, there shall be a rebuttable presumption that the test result was valid if the employer complied with the provisions of this chapter.

(5) No cause of action for defamation of character, libel, slander or damage to reputation arises in favor of any person against an employer who has established a program of drug and alcohol testing in accordance with this chapter, unless:

(a) Information regarded as confidential is released not in accordance with an information release form signed by the person or otherwise not in accordance with this chapter;

(b) The information disclosed was based on an incorrect test result;

(c) The incorrect test result was disclosed with malice; and

(d) All other elements of an action for defamation of character, libel, slander or damage to reputation as established by statute or common law, are satisfied.

(6) No cause of action shall arise in favor of any person based upon the failure of an employer to establish a program or policy for drug and alcohol testing.

HISTORY: Laws, 1991, ch. 610, § 13; reenacted and codified, Laws, 1994, ch. 323, § 13, eff from and after passage (approved March 14, 1994).

Cross References — Award of attorney fees, see § 71-7-23.

JUDICIAL DECISIONS

1. In general.

In an employment case in which a former employer filed a Fed. R. Civ. P. 12(b)(6) motion to dismiss, any claim by a pro se former employee brought under Miss. Code Ann. § 71-7-1 et seq., was barred by the statute of limitations in Miss. Code Ann. § 71-7-25(1). De Graffenried v. Smithway Motor Xpress, Inc., 2014 U.S. Dist. LEXIS 176075 (N.D. Miss. Dec. 22, 2014).

RESEARCH REFERENCES

Am. Jur.

62A Am. Jur. 2d, Privacy § 55-57.

20 Am. Jur. Pl & Pr Forms (Rev), Privacy, Form 1 et seq.

32 Am. Jur. Trials 120, Invasion of Privacy.

§ 71-7-27. Procedure for and effect of election to conduct testing policy or program; procedure for rescission of election; effect of failure to make election or rescission of election.

(1) A private employer may affirmatively elect to conduct an employee drug and alcohol testing policy or program pursuant to the provisions of this chapter. Such election shall be made by including in the written statement of the employer's policy on drug use provided for in Section 71-7-3(1), and in the job applicant notification provided for in Section 71-7-3(4), a specific statement that the employer's policy is being implemented pursuant to the provisions of this chapter. In the event a private employer makes such an election, the private employer and its employees and job applicants shall have the rights and obligations available to a private employer and its employees and job applicants under this chapter. A private employer who has made such an election may rescind such election by posting a written and dated notice in an appropriate and conspicuous location on the employer's premises, which notice shall state that the employer's employee drug and alcohol testing policy or program will no longer be conducted pursuant to this chapter. As to employees, the rescission of such election shall become effective no earlier than ten (10) working days after the date of the posted notice. As to job applicants, an employer may rescind such election without notice to such job applicant.

(2) Any private employer who does not make such an election or who rescinds an election previously made will be deemed to not be conducting an employee drug and alcohol testing policy or program pursuant to the provisions of this chapter, and in that event the rights and obligations of the employer and its employees and job applicants will not in any way be subject to or affected by the provisions of this chapter, but will instead be governed by applicable principles of contract or common law.

HISTORY: Laws, 1991, ch. 610, § 14; reenacted and codified, Laws, 1994, ch. 323, § 14, eff from and after passage (approved March 14, 1994).

Cross References — Conduct of testing generally, see § 71-7-5.

§ 71-7-29. Application of chapter to employers subject to federal testing laws.

This chapter shall not apply to any employer who is subject to federal law or federal regulations governing the administering of drug and alcohol tests to any of its employees or applicants for employment.

HISTORY: Laws, 1991, ch. 610, § 15; reenacted and codified, Laws, 1994, ch. 323, § 15, eff from and after passage (approved March 14, 1994).

§ 71-7-31. Private employer establishing testing program not deemed agent or instrument of the state.

A private employer shall not, by virtue of establishing or implementing a program for drug and alcohol testing in accordance with this chapter or otherwise, be deemed to be an agent or instrument of the State of Mississippi or any body, department, agency, institution or political subdivision thereof.

HISTORY: Laws, 1991, ch. 610, § 16; reenacted and codified, Laws, 1994, ch. 323, § 16, eff from and after passage (approved March 14, 1994).

§ 71-7-33. Requirement of abstention from use of tobacco products during nonworking hours as condition of employment prohibited.

It shall be unlawful for any public or private employer to require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products during nonworking hours, provided that the individual complies with applicable laws or policies regulating smoking on the premises of the employer during working hours.

HISTORY: Laws, 1991, ch. 610, § 17; reenacted and codified, Laws, 1994, ch. 323, § 17, eff from and after passage (approved March 14, 1994).

RESEARCH REFERENCES

Practice References.

Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Lex K. Larson, Employment Screening (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

CHAPTER 9.

MEDICAL SAVINGS ACCOUNT ACT

Sec.	
71-9-1.	Short title.
71-9-3.	Definitions.
71-9-5.	Authority to establish medical savings account; limits on deductible amounts contributed to account; interest earned on account excluded from gross income.
71-9-7.	Use of funds in account; distribution of funds in account upon death of account holder.
71-9-9.	Withdrawals from account by account holder.

§ 71-9-1. Short title.

This chapter shall be known and may be cited as the "Medical Savings Account Act."

HISTORY: Laws, 1994, ch. 468, § 1; reenacted and amended, Laws, 1997, ch. 606, § 3, eff from and after passage (approved April 24, 1997).

Editor's Notes — Laws of 1997, ch. 606, § 3, provides that § 71-9-1 is reenacted and amended. However, the statement that the section was amended appears to be an error since no changes were made.

Laws of 1997, ch. 606, § 9, provides as follows:

"SECTION 9. Section 7, Chapter 468, General Laws of 1994, is amended as follows: "Section 7. This act shall take effect and be in force from and after January 1, 1994."

§ 71-9-3. Definitions.

As used in this chapter:

(a) "Account administrator" means a state chartered bank, savings and loan association, credit union or trust company authorized to act as a fiduciary and under the supervision of the Department of Banking and Consumer Finance or the Department of Savings Associations, as appropriate; a national bank, national lending association or federal savings and loan association or credit union authorized to act as a fiduciary in this state; an insurer licensed and admitted to do business in this state; a third party administrator licensed by the Mississippi Commissioner of Insurance; or an employer, if the employer has a self-insured health plan meeting federal ERISA requirements.

(b) "Account holder" means a resident individual or an employee for whose benefit a medical savings account is established.

(c) "Dependent" means the spouse of an account holder or the child of an account holder if the child is:

(i) Legally entitled to the provision of proper or necessary subsistence, education, medical care, or other care necessary for his or her health, guidance or well-being and not otherwise emancipated, self-supporting, married or a member of the Armed Forces of the United States; or

(ii) Mentally or physically incapacitated to the extent that he or she is not self-sufficient.

(d) "Domicile" means a place where an individual has his or her true, fixed and permanent home and principal establishment, to which, whenever absent, he or she intends to return.

(e) "Eligible medical expense" means an expense paid by a taxpayer for medical care described in Section 213(d) of the Internal Revenue Code.

(f) "Health savings account" means a trust or custodian established in this state pursuant to Section 233 of the Internal Revenue Code of 1986 and rules or guidance thereunder issued by the U.S. Department of the Treasury or Internal Revenue Service.

(g) "High deductible health plan" means a health coverage policy, certificate or contract that provides for payments for covered benefits that exceed the higher deductible.

(h) "Higher deductible" means a deductible of not less than One Thousand Five Hundred Dollars ($1,500.00) but not more than Two Thousand Two Hundred Fifty Dollars ($2,250.00) for individual health coverage, and not less than Three Thousand Dollars ($3,000.00) but not more than Four Thousand Five Hundred Dollars ($4,500.00) for health coverage provided to an individual and his or her dependents, in tax year 1994. Beginning after 1998, such deductible limits thereafter shall be adjusted annually in fifty-dollar increments for increases in the cost of living, as measured by the medical costs component of the Consumer Price Index.

(i) "Medical savings account" means an account established to pay eligible medical expenses of the account holder and his or her dependents and, for purposes of state income tax deductions, includes the term "health savings account" as defined in paragraph (f) of this section.

(j) "Medical savings account program" means a program that includes all of the following:

(i) The purchase by an employer of a qualified higher deductible health plan for the benefit of an employee and his or her dependents or the purchase by a resident individual of a qualified higher deductible health plan for his or her benefit or for the benefit of his or her dependents, or both;

(ii) The payment on behalf of an employee into a medical savings account by his or her employer or payment into a medical savings account by a resident individual on his or her behalf of at least sixty-six and two-thirds percent (66-⅔%) of the premium reduction realized by the purchase of a qualified higher deductible health plan; and

(iii) An account administrator to administer the medical savings account and the reimbursement of eligible medical expenses therefrom.

(k) "Qualified higher deductible health plan" means an accident and health insurance policy, certificate or contract that:

(i) Is purchased by an employer for the benefit of an employee or by a resident individual for his or her benefit; and

(ii) Provides for payment of covered expenses that exceed the higher deductible, but shall not exceed the maximum out-of-pocket expenses of

Three Thousand Dollars ($3,000.00) for individual coverage and Five Thousand Five Hundred Dollars ($5,500.00) for family coverage.

(*l*) "Resident individual" means an individual who has a domicile in this state.

HISTORY: Laws, 1994, ch. 468, § 2; reenacted and amended, Laws, 1997, ch. 606, § 4; Laws, 2005, ch. 466, § 1, eff from and after passage (approved Mar. 29, 2005).

Editor's Notes — Laws of 1997, ch. 606, § 9, provides as follows:

"SECTION 9. Section 7, Chapter 468, General Laws of 1994, is amended as follows: "Section 7. This act shall take effect and be in force from and after January 1, 1994."

Cross References — As to authority of Department of Finance and Administration to offer medical savings accounts, see § 25-15-9.

Federal Aspects— Section 231(d) of the Internal Revenue Code is classified at 26 USCS § 213(d).

Employee Retirement Income Security Act (ERISA), see 29 USCS §§ 1001 et seq.

§ 71-9-5. Authority to establish medical savings account; limits on deductible amounts contributed to account; interest earned on account excluded from gross income.

(1) Each employer shall be permitted to offer voluntarily the following programs:

(a) Continued coverage under the employer's existing health coverage policy, certificate or contract; or

(b) Participation in a medical savings account program.

(2) An employer that previously did not provide an accident and health insurance policy, certificate or contract for his or her employees may establish a medical savings account program. In this case, the premium reduction referred to in Section 71-9-3(j)(ii) shall be based on the cost of similar coverage with a Five Hundred Dollar ($500.00) deductible.

(3) A resident individual may establish a medical savings account for the benefit of himself or herself and his or her dependents. Contributions to a medical savings account established by a resident individual for a tax year shall not exceed the allowable deductible for a qualified higher deductible health plan.

(4) Except as otherwise provided by law, the principal contributed and the interest earned on a medical savings account shall be excluded from the taxable gross income of the account holder under Section 27-7-15.

HISTORY: Laws, 1994, ch. 468, § 3; reenacted without change, Laws, 1997, ch. 606, § 5, eff from and after passage (approved April 24, 1997).

Editor's Notes — Laws of 1997, ch. 606, § 9, provides as follows:

"SECTION 9. Section 7, Chapter 468, General Laws of 1994, is amended as follows: "Section 7. This act shall take effect and be in force from and after January 1, 1994."

§ 71-9-7. Use of funds in account; distribution of funds in account upon death of account holder.

(1) Except as otherwise provided in Section 71-9-9 of this chapter, an

account administrator shall use the funds held in a medical savings account solely for the purpose of paying eligible medical expenses of the account holder, or his or her dependent, or to pay for an accident and health insurance policy, certificate or contract if the account holder would not otherwise have accident and health insurance coverage.

(2) The account holder may submit documentation for eligible medical expenses paid by the account holder during a tax year to the account administrator, and the account administrator shall reimburse the account holder for the eligible medical expenses out of the medical savings account.

(3) Upon the death of the account holder, the account administrator shall distribute the principal and accumulated interest of the medical savings account to the estate of the account holder, unless the account holder has designated a beneficiary in writing to the account administrator, in which case the accountant administrator shall make such distribution to the designated beneficiary.

HISTORY: Laws, 1994, ch. 468, § 4; reenacted without change, Laws, 1997, ch. 606, § 6, eff from and after passage (approved April 24, 1997).

Editor's Notes — Laws of 1997, ch. 606, § 9, provides as follows:

"SECTION 9. Section 7, Chapter 468, General Laws of 1994, is amended as follows: "Section 7. This act shall take effect and be in force from and after January 1, 1994."

§ 71-9-9. Withdrawals from account by account holder.

Unencumbered funds that have accumulated in a medical savings account that are in excess of the higher deductible may be withdrawn by the account holder for purposes other than paying eligible medical expense or procuring health coverage. Money withdrawn pursuant to this section shall be considered gross income as provided in Section 27-7-17, Mississippi Code of 1972.

HISTORY: Laws, 1994, ch. 468, § 5; reenacted without change, Laws, 1997, ch. 606, § 7, eff from and after passage (approved April 24, 1997).

Editor's Notes — Laws of 1997, ch. 606, § 9, provides as follows:

"SECTION 9. Section 7, Chapter 468, General Laws of 1994, is amended as follows: "Section 7. This act shall take effect and be in force from and after January 1, 1994."

CHAPTER 11.

EMPLOYMENT PROTECTION ACT

Sec.
71-11-1. Legislative findings.
71-11-3. Definitions; verification of work eligibility status of new hires; employer liability; exemptions; penalties for violation.

§ 71-11-1. Legislative findings.

The Legislature finds that when illegal immigrants have been sheltered and harbored in this state and encouraged to reside in this state through the benefit of work without verifying immigration status, these practices impede and obstruct the enforcement of federal immigration law, undermine the security of our borders, and impermissibly restrict the privileges and immunities of the citizens of Mississippi. The Legislature further finds that illegal immigration is encouraged when public agencies within this state provide public benefits without verifying immigration status. The Legislature further finds that the Tenth Amendment to the United States Constitution reserves to the states those powers not delegated to the United States by the Constitution. Therefore, the Legislature declares that it is a compelling public interest of this state to discourage illegal immigration by requiring all agencies within this state to fully cooperate with federal immigration authorities in the enforcement of federal immigration laws. The Legislature also finds that other measures are necessary to ensure the integrity of various governmental programs and services.

HISTORY: Laws, 2008, ch. 312, § 1, see Editor's Note for effective date.

Editor's Notes — Laws of 2008, ch. 312, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after July 1, 2008, for all state agencies, departments, and political subdivisions, all employers who have contracts with the State of Mississippi, or with its departments, agencies, political subdivisions, all third party employers, and any person or company using a third-party employer.

"This act shall take effect and be in force from and after January 1, 2009, for all other employers who do business in Mississippi."

§ 71-11-3. Definitions; verification of work eligibility status of new hires; employer liability; exemptions; penalties for violation.

(1) This chapter shall be known as the "Mississippi Employment Protection Act."

(2) The provisions of this section shall be enforced without regard to race, gender, religion, ethnicity or national origin.

(3) For the purpose of this section only, the following words shall have the meanings ascribed herein unless the content clearly states otherwise:

(a) "Employer" is any person or business that is required by federal or state law to issue a United States Internal Revenue Service Form W-2 or Form 1099 to report income paid to employed or contracted personnel in Mississippi.

(b) "Employee" is any person or entity that is hired to perform work within the State of Mississippi and to whom a United States Internal Revenue Service Form W-2 or Form 1099 must be issued.

(c) "Third-party employer" is any person or company that provides workers for another person or company. This includes, but is not limited to, leasing companies and contract employers.

(d) "Status verification system" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, Public Law 104-208, Division C, Section 403(a); 8 USC, Section 1324a, and operated by the United States Department of Homeland Security, known as the E-Verify Program.

(e) "Unauthorized alien" means an alien as defined in Section 1324a(h)(3) of Title 8 of the United States Code.

(f) "Public employer" means every department, agency or instrumentality of the state or a political subdivision of the state.

(g) "Subcontractor" means a subcontractor, contract employee, staffing agency or any contractor regardless of its tier.

(4)(a) Employers in the State of Mississippi shall only hire employees who are legal citizens of the United States of America or are legal aliens. For purposes of this section, a legal alien is an individual who was lawfully present in the United States at the time of employment and for the duration of employment, or was permanently residing in the United States under color of law at the time of employment and for the duration of employment.

(b)(i) Every employer shall register with and utilize the status verification system to verify the federal employment authorization status of all newly hired employees.

(ii) No contractor or subcontractor shall hire any employee unless the contractor or subcontractor registers and participates in the status verification system to verify the work eligibility status of all newly hired employees.

(iii) No contractor or subcontractor who enters into a contract with a public employer shall enter into such a contract or subcontract unless the contractor or subcontractor registers and participates in the status verification system to verify information of all newly hired employees.

(c) The provision of this section shall not apply to any contracts entered into on or before July 1, 2008.

(d) It shall be a discriminatory practice for an employer to discharge an employee working in Mississippi who is a United States citizen or permanent resident alien while retaining an employee who the employing entity knows, or reasonably should have known, is an unauthorized alien hired after July 1, 2008, and who is working in Mississippi in a job category that requires equal skill, effort and responsibility, and which is performed under similar working conditions, as defined by 29 USC, Section 206(d) (1), as the job category held by the discharged employee.

(e) An employing entity which, on the date of the discharge in question, was enrolled in and used the status verification system to verify the employment eligibility of its employees in Mississippi hired after July 1, 2008, shall be exempt from liability, investigation or suit arising from any action under this section.

(f) No cause of action for a violation of this section shall lie under any other Mississippi law but shall arise solely from the provisions of this section.

(5) Any employer that complies with the requirements of this section shall be held harmless by the Mississippi Department of Employment Security, provided the employer is not directly involved in the creation of any false documents, and provided that the employer did not knowingly and willfully accept false documents from the employee.

(6)(a) All third-party employers that conduct business in Mississippi shall register to do business in Mississippi with the Mississippi Department of Employment Security before placing employees into the workforce in Mississippi.

(b) Third-party employers shall provide proof of registration and any participation in the status verification system to any Mississippi employer with whom they do business.

(7)(a) State of Mississippi agencies and political subdivisions, public contractors and public subcontractors and private employers with two hundred fifty (250) or more employees shall meet verification requirements not later than July 1, 2008.

(b) Employers with at least one hundred (100) but less than two hundred fifty (250) employees shall meet verification requirements not later than July 1, 2009.

(c) Employers with at least thirty (30) but less than one hundred (100) employees shall meet verification requirements not later than July 1, 2010.

(d) All employers shall meet verification requirements not later than July 1, 2011.

(e)(i) Any employer violating the provisions of this section shall be subject to the cancellation of any state or public contract, resulting in ineligibility for any state or public contract for up to three (3) years, the loss of any license, permit, certificate or other document granted to the employer by any agency, department or government entity in the State of Mississippi for the right to do business in Mississippi for up to one (1) year, or both.

(ii) The contractor or employer shall be liable for any additional costs incurred by the agencies and institutions of the State of Mississippi, or any of its political subdivisions, because of the cancellation of the contract or the loss of any license or permit to do business in the state.

(iii) Any person or entity penalized under this section shall have the right to appeal to the appropriate entity bringing charges or to the circuit court of competent jurisdiction.

(f) The Department of Employment Security, State Tax Commission, Secretary of State, Department of Human Services and the Attorney General shall have the authority to seek penalties under this section and to bring charges for noncompliance against any employer or employee.

(8)(a) There shall be no liability under this section in the following circumstances:

(i) An employer who hires an employee through a state or federal work program that requires verification of the employee's social security number and provides for verification of the employee's lawful presence in the United States in an employment-authorized immigration status;

(ii) Any candidate for employment referred by the Mississippi Department of Employment Security, if the Mississippi Department of Employment Security has verified the social security number and provides for verification of the candidate's lawful presence in the United States in an employment-authorized immigration status; or

(iii) Individual homeowners who hire workers on their private property for noncommercial purposes, unless required by federal law to do so.

(b)(i) Compliance with the sections of this statute shall not exempt the employer from regulations and requirements related to any federal laws or procedures related to employers.

(ii) This section shall not be construed as an attempt to preempt federal law.

(c)(i) It shall be a felony for any person to accept or perform employment for compensation knowing or in reckless disregard that the person is an unauthorized alien with respect to employment during the period in which the unauthorized employment occurred. Upon conviction, a violator shall be subject to imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, a fine of not less than One Thousand Dollars ($1,000.00) nor more than Ten Thousand Dollars ($10,000.00), or both.

(ii) For purposes of determining bail for persons who are charged under this section, it shall be a rebuttable presumption that a defendant who has entered and remains in the United States unlawfully is deemed at risk of flight for purposes of bail determination.

HISTORY: Laws, 2008, ch. 312, § 2, see Editor's Note for effective date.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the first sentence of (8)(c)(i). Inserted the word "in" after the word "period" so that "during the period which the unauthorized employment occurred." will read as "during the period in which the unauthorized employment occurred." The Joint Committee ratified the correction at its August 5, 2008, meeting.

Editor's Notes — Laws of 2008, ch. 312, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after July 1, 2008, for all state agencies, departments, and political subdivisions, all employers who have contracts with the State of Mississippi, or with its departments, agencies, political subdivisions, all third party employers, and any person or company using a third-party employer.

"This act shall take effect and be in force from and after January 1, 2009, for all other employers who do business in Mississippi."

Section 27-3-4 provides that the terms " 'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Mississippi Department of Employment Security generally, see §§ 71-5-101 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Preemption of State Statute, Law, Ordinance, or Policy with Respect to Employment- and Education-Related Issues Involving Aliens. 88 A.L.R.6th 627.

CHAPTER 13.

PROHIBITION AGAINST EMPLOYER INTIMIDATION ACT

Sec.	
71-13-1.	Short title.
71-13-3.	Legislative findings.
71-13-5.	Prohibition against unlawfully intimidating business or employee or representative of a business to obtain something of value; prohibition against conspiring to disrupt lawful commerce in places of business.
71-13-7.	Prohibition against intentionally or recklessly damaging business property of another under certain circumstances; aiding and abetting the intentional or reckless damaging of business property of another.
71-13-9.	Relation to First Amendment.
71-13-11.	Award of damages in civil action under provisions of this chapter under certain circumstances.

§ 71-13-1. Short title.

This chapter shall be known and cited as the "Prohibition Against Employer Intimidation Act."

HISTORY: Laws, 2014, ch. 497, § 1, eff from and after July 1, 2014.

§ 71-13-3. Legislative findings.

The State of Mississippi is a right to work state and the state's right to work laws are founded on the basic principle that every individual has an inherent right to choose if they want to join a union or an employee organization, and this right to choose should not impact their employment. The State of Mississippi recognizes the importance and necessity of fostering economic development and job creation. Intimidation and coercion against any business, can make the state an unwelcoming and dangerous place for new business and job growth. Intimidation, extortion, and coercion are illegal and present a substantial risk to public safety and the well-being of the state's citizens, workers and businesses; and certain limited and reasonable restrictions are deemed necessary to protect our citizens from these harms.

HISTORY: Laws, 2014, ch. 497, § 2, eff from and after July 1, 2014.

§ 71-13-5. Prohibition against unlawfully intimidating business or employee or representative of a business to obtain something of value; prohibition against conspiring to disrupt lawful commerce in places of business.

(1) No person, organization, corporation, union, agency or other entity thereof shall:

(a) Damage, harm, injure or threaten to injure or coerce a business, or any employee or representative of the business with the intent to unlawfully intimidate the business or its employees from exercising their rights, which are protected by state and federal law, in an effort to obtain something of value for a public or private organization, corporation, union, agency or other entity, including, but not limited to, a neutrality agreement, card check agreement, collective bargaining recognition or other objective of an organized initiative;

(b) Restrict a business, a union, or the owners or employees of a business, from exercising their rights, which are protected under state and federal law, in an effort to obtain something of value for a public or private organization, corporation, union, agency or other entity.

(c) Conspire with another, for the purpose of disrupting lawful commerce in places of business, where such activity constitutes an assault or causes physical injury to any individual, located in or around the place of business.

(2) For purposes of this section, "something of value" includes, but is not limited to, a neutrality agreement, card check agreement, recognition or any other objective that is motivating such activities.

HISTORY: Laws, 2014, ch. 497, § 3, eff from and after July 1, 2014.

§ 71-13-7. Prohibition against intentionally or recklessly damaging business property of another under certain circumstances; aiding and abetting the intentional or reckless damaging of business property of another.

(1) No person, organization, corporation, union, agency or other entity shall intentionally or recklessly damage the business property of another when either of the following applies:

(a) The property is used by its owner or possessor in the owner's or possessor's profession, business, trade or occupation; or

(b) The person damages or otherwise marks the property owner's merchandise.

(2) Any person who organizes, coordinates, controls, supervises, finances, manages, aids or abets any of the activities prohibited by subsection (1) of this section shall be charged and suffer the same penalties as the person, organization, corporation, union, agency or other entity.

HISTORY: Laws, 2014, ch. 497, § 4, eff from and after July 1, 2014.

§ 71-13-9. Relation to First Amendment.

Nothing in the provisions of this chapter shall be construed to infringe and impede upon any individual's First Amendment rights.

HISTORY: Laws, 2014, ch. 497, § 5, eff from and after July 1, 2014.

§ 71-13-11. Award of damages in civil action under provisions of this chapter under certain circumstances.

In any civil action filed under the provisions of this chapter, the prevailing plaintiff shall be entitled to damages upon a showing that the conspiracy constitutes an assault or causes physical injury, as defined by law for such causes of action, to such plaintiff, in addition to any other damages otherwise authorized by law.

HISTORY: Laws, 2014, ch. 497, § 6, eff from and after July 1, 2014.

CHAPTER 15.

MISSISSIPPI EMPLOYMENT FAIRNESS ACT

Sec.

71-15-1.	Short title.
71-15-3.	Legislative findings.
71-15-5.	Definitions.
71-15-7.	State retains exclusive authority to regulate certain labor agreements; effect of violation of this section.
71-15-9.	Authority to require employer or multiemployer association to enter into project labor agreement; relation to National Labor Relations Act.

§ 71-15-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Employment Fairness Act."

HISTORY: Laws, 2014, ch. 499, § 1, eff from and after July 1, 2014.

§ 71-15-3. Legislative findings.

Employers and employees alike benefit from consistent and established standards regulating fair employment practices. There are existing federal and state laws, which seek to protect individuals from discrimination in employment, while also providing appropriate due process to employers without limiting the employer's ability to maintain a secure, safe and productive workplace, including, but not limited to, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Equal Pay Act and the Genetic Information Nondiscrimination Act.

Mississippi is a right-to-work state and is governed by the right-to-work laws. Such laws are premised on the belief of free choice whereby employees have a right to freely decide whether to join, be represented by, or financially support a union or employee organization. A labor neutrality agreement is used as a tool to pressure company ownership and management to agree to union demands before the union approaches or involves affected employees, which is unfair to the employer as well as the employee or potential employee. This state recognizes that these agreements have become increasingly common in recent years. As a result of this increase, the need to regulate the use of such agreements is necessary to ensure that both the employer and employee are treated in the fairest way possible.

HISTORY: Laws, 2014, ch. 499, § 2, eff from and after July 1, 2014.

Federal Aspects— Title VII of the Civil Rights Act of 1964, see 42 USCS §§ 2000a et seq.

Age Discrimination in Employment Act, see 29 USCS 621 et seq.

Americans with Disabilities Act, see 42 USCS § 12101 et seq, and 47 USCS § 611.

Equal Pay Act, see 29 USCS § 206(d).
Genetic Information Nondiscrimination Act, see 42 USCS § 2000ff.

§ 71-15-5. Definitions.

For purposes of this chapter, the following words shall have the following meanings, unless the context clearly describes otherwise:

(a) "Employee" means a natural person who performs services for an employer for valuable consideration, and does not include a self-employed independent contractor.

(b) "Employer" means a person, association, or legal or commercial entity receiving services from an employee and, in return, giving compensation of any kind to such employee.

(c) "Discrimination" means when an employer takes an action or makes a distinction adversely affecting an employee or job applicant based on the group, class, or category to which that person belongs.

(d) "Federal labor laws" mean the National Labor Relations Act, compiled in 29 USCS, Section 151 et seq., and the Labor Management Relations Act, compiled in 29 USCS, Section 141 et seq., as amended, presidential executive orders, federal administrative regulations relating to labor and management or employee and employer issues, and the United States Constitution as amended.

(e) "Multiemployer association" means a bargaining unit composed of independent employers who associate together to negotiate jointly with one (1) or more labor organizations representing the employees of the independent employers within the bargaining unit.

(f) "Labor peace agreement" means an arrangement between a union and employer under which one (1) or both entities agree to waive certain rights under federal law with regard to union organizing and related activity.

(g) "Project labor agreement" means a collective bargaining agreement with one (1) or more labor unions that establishes the terms and conditions of employment for a specific construction project, before employees are hired to work on such project.

(h) "State," for the purposes of this chapter, means the Mississippi Legislature.

HISTORY: Laws, 2014, ch. 499, § 3, eff from and after July 1, 2014.

§ 71-15-7. State retains exclusive authority to regulate certain labor agreements; effect of violation of this section.

(1) The state shall retain the exclusive authority to require an employer or multiemployer association to accept or otherwise agree to any provisions of a labor peace agreement or any provisions that are mandatory or nonmandatory subjects of collective bargaining under federal labor laws, including, but not limited to, any limitations on an employer or multiemployer association's

rights to engage in collective bargaining with a labor organization, to lock out employees, or to operate during a work stoppage; however, this subsection shall not invalidate or otherwise restrict the state from requiring the use of project labor agreements to the extent permissible under federal labor laws.

(2) This section shall be interpreted and enforced in a manner that is consistent with the National Labor Relations Act, compiled in 29 USCS, Section 151 et seq.

(3) Any agreement, contract, understanding or practice, written or oral, implied or expressed, between any employer and any labor organization containing requirements in violation of this section is declared to be unlawful, null and void, and of no legal effect.

(4) An employer or employee may seek injunctive relief in the Chancery Court of Hinds County, Mississippi, for violations of the provisions of this section.

HISTORY: Laws, 2014, ch. 499, § 4, eff from and after July 1, 2014.

§ 71-15-9. Authority to require employer or multiemployer association to enter into project labor agreement; relation to National Labor Relations Act.

(1) The state shall retain the exclusive authority to require an employer or multiemployer association to enter into a project labor agreement.

(2) This section does not prohibit an employer or any other person covered by the National Labor Relations Act compiled in 29 USCS Section 151 from entering into agreements or engaging in any other activity protected by law. This section may not be interpreted to interfere with the labor relations of persons covered by the National Labor Relations Act.

(3) Relief that would interfere with the labor relations of persons covered by the National Labor Relations Act may not be granted under the provisions of this section.

HISTORY: Laws, 2014, ch. 499, § 5, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a federal statutory reference in subsection (2) by substituting "29 USCS Section 151" for "29 USCS Section 131." The Joint Committee ratified the correction at its August 20, 2021, meeting.

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